Public Utilities

FORTNIGHTLY

October 12, 1944

PUBLIC OWNERSHIP AND SURPLUS GOVERNMENT PROPERTY
By T. N. Sandifer

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Battle of the Spectrum
By Herbert Corey

« »

Utility Rates and Taxes
By Owen Ely

« »

The Utilities Have a Good Story to Tell
By E. Cleveland Giddings

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS


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Climatic conditions, under which various communications equipments are operated, vary from the sub-zero temperatures of the northernmost climates to the tropical temperatures encountered at the equator. Conditions of humidity cover the extreme range; from the dry arid regions of the many deserts, to the almost 100% humidity in tropical and sub-tropical atolls.
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Public Utilities Fortnightly

VOLUME XXXIV *October 12, 1944* NUMBER 8

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

Publication Office .....CANDLER BUILDING, BALTIMORE 2, MD.
Executive, Editorial, and Advertising Offices .....MUNSEY BUILDING, WASHINGTON 4, D. C.

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1944 by Public Utilities Reports, Inc. Printed in U. S. A.

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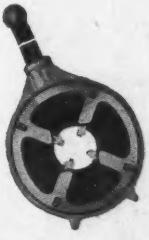

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Pages with the Editors

JUST how much of the estimated $100,000,000,000 surplus war property goods will be disposed of, and just how much the U. S. government will get for it, are questions on which even the best-informed professional observer, inside or outside of Washington, can only venture an "educated guess." Such was the opinion often expressed in different ways during congressional hearings and debate on the recently approved Surplus Property Act.

IT has been estimated in one responsible quarter that perhaps as little as from seven to ten billion dollars worth of surplus goods, at present book cost, will eventually find their way into the reconversion market. It has likewise been estimated that at least 80 per cent of the property will remain abroad, where it is now located, to be used for rehabilitation of devastated areas, or sold for scrap. Many items remaining in this country, such as tanks, anti-aircraft guns, and other military and naval specialties, obviously cannot be sold or converted for civilian use at much more than scrap value. Altogether, it looks like a buyer's market for scrap after this war, whether in the domestic or foreign trade.

THE relatively small proportion of surplus war goods which will actually be sold back into our civilian economy did not prevent Congress from experiencing a fairly brief but rather spirited fight over different provisions in the Surplus Property Act. Which government agencies should sell? Which should be the form of top control? Above all, what preferences to small business, public agencies, charitable institutions, etc., should be allowed? These were among the controversial questions which Congress had to resolve in passing on this important segment of our "reconversion" legislative program.

OF special interest to public utilities was the campaign to write into the bill provisions which would enable publicly owned and operated utility agencies to enjoy marked preferences over private enterprise in the sale of surplus property goods. If the Senate bill had prevailed, the privately owned utilities would not have had the proverbial Chinaman's chance of competing on anything like even terms with public agencies attempting to buy surplus war goods and properties of possible use in the public utility business. It is still doubtful if they have such a chance.

E. CLEVELAND GIDDINGS

The man who makes a better mouse trap will go broke if he keeps his trap shut.

(SEE PAGE 489)

IN the opening article in this issue, T. N. SANDIFER, Washington newspaper correspondent and writer for numerous trade publications, analyzes the preferential provisions which would have given publicly owned utilities, as well as REA coöperatives, not only the right to 50 per cent discount, but outright donations under some circumstances and authority to prevent and block acquisitions of Federal surplus war property by private utilities.

SUCH one-sided restrictions, obviously designed to cripple any possibility of tax-paying private enterprise standing on the same level with tax-exempt public enterprise in bidding for surplus property, may strike some as being at strange variance with the avowed purpose of the Surplus Property Act (expressed in its policy provisions) to promote and encourage private enterprise.

As finally approved by the Congress, the Property Act did eliminate some of the more drastic pro-public ownership bias in the Senate version, although it still retained one "dog-in-the-manger" provision with respect to transmission lines. Any federally owned transmission line which has been earmarked by any

Federal or state agency as desirable for public power operations, including coöperative projects, may not be sold to any other except that public agency, without an express act of Congress. This reservation has neither time limit nor cash deposit requirement. Unless Congress acts, all Federal power lines are "frozen" indefinitely against the possibility of acquisition by private companies.

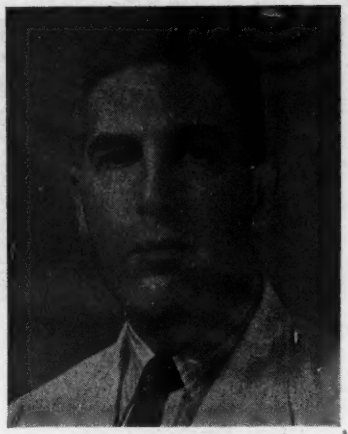
IF you were to ask the experts on "Information Please" or the omniscient "Quiz Kids," or some other source of encyclopaedic knowledge, "What is a spectrum?" you might get any one of the following replies: (1) A subdivision of white light into its various color components, according to the length of light waves. (2) A scale of sound waves beginning with subsonic tones, progressing through the audible or piano keyboard tones, into the supersonic tones pitched above the range of the human ear, this scale arranged according to sound wave lengths or vibrations. (3) A scale of the electrical and radioactive frequencies used in wire and wireless power transmission and communication, arranged according to frequencies or radio wave lengths.

THESE three different definitions would not only be correct as far as they went, but the three definers would all be talking about the same thing. At least they would be talking about three different segments of the same magic ribbon which runs almost the entire gamut of human perception, including sound, light, heat, and those mysterious gamma and cosmic rays which are literally "out of this world."

THIS is, of course, old stuff to electric engineers and physicists. In addition it has been given more popular discussion by the activity of recent years in radio and the general field of electronics. But we never cease to marvel at the fascinating story of this invisible magic ribbon.

IT seems a little strange, therefore, to come up against the somewhat blunt reality that our magic ribbon has its limitations. Far from being one of those abstract infinities, such as time and space, the radio spectrum has become a veritable battleground of regulatory conflict. The conflict involves not only the Federal Communications Commission and radio companies, but also international conferences, the Army and Navy, telephone companies, manufacturers of medical instruments, and so forth. The article in this issue (beginning page 476) by our Washington correspondent, HERBERT COREY, gives us one interesting phase of this continuous battle of the spectrum.

E. CLEVELAND GIDDINGS, whose article on public relations begins on page 489, is a newcomer to these pages, but an old hand in the transit business. Born in Brooklyn forty years ago, he started out as a New York city journalist, but somehow slipped over into the Brooklyn Manhattan Transit Corporation When BMT sold out to the city of New York in 1939, MR. GIDDINGS joined the New York Board of Transportation. Two years ago MR. GIDDINGS came to Washington to take his present post as assistant to the president of the Capital Transit Company in charge of public relations activities.



T. N. SANDIFER

Uncle Sam is likely to prove a poor salesman for the taxpayers' money.

(SEE PAGE 465)

OWEN ELY, whose article entitled "Utility Rates and Taxes" begins page 483, is financial editor of this publication.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

A PETITION for authority to furnish free transportation to members of the armed forces of the United States when in uniform was dismissed by the Pennsylvania commission. (See page 1.)

HOTELS collecting surcharges for toll or interstate telephone calls by hotel guests were held to be subscribers rather than agents of the telephone company. (See page 31.)

The next number of this magazine will be out October 26th.

The Editors

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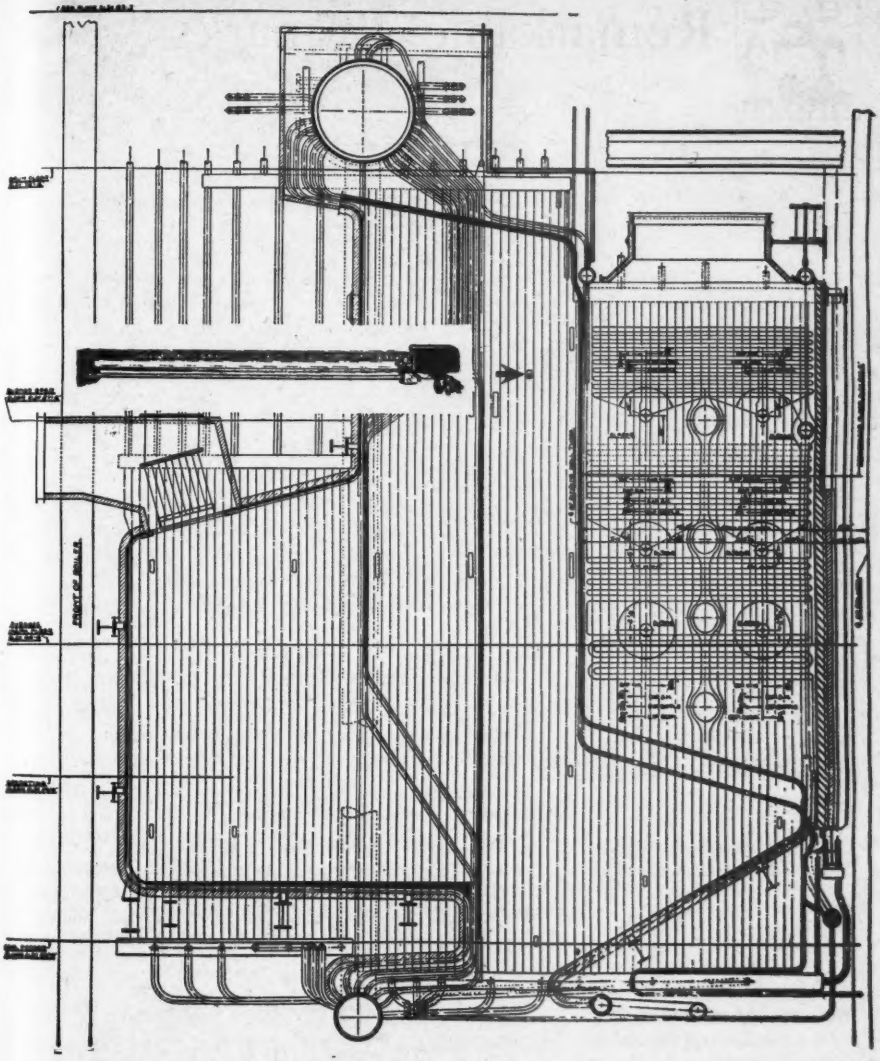
VULCAN ENGINEERED SOOT BLOWER INSTALLATIONS



Two Babcock & Wilcox Steam Generators, 660,000 lbs. per hour each at 1250 pounds pressure. Soot Blowers take steam at 265 psi. Long element life, easy operation, straight elements and very effective cleaning are obtained by the use of the HyVULoy elements pages 14 and 15, HyVULoy Protective Bearings page 16, air cooling and pre-cooling, slow-speed LGE-2 heads—pages 6 and 7, over-arm support. Slag screen, water walls and tubes in the open pass are maintained slag-free by Retractable Model T-2 elements.

The new VULCAN catalog fully describing VULCAN equipment appears in the 1944 Sweets, and a copy is available on your request.

VULCAN SOOT BLOWER CORPORATION, DU BOIS, PENNA.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

HERB LITTLE
Washington writer.

"We used to hear the utilities beef about the 'utility cuts' on rates; now the housewives are grumbling about the 'utility cuts' on beef."

THOMAS E. DEWEY
Governor of New York.

"We will be truly effective in helping with the economic rehabilitation of the world only if we first restore at home a healthy, a vigorous, and a growing economy."

GERALD W. LANDIS
U. S. Representative from Indiana.

". . . will we rake leaves for the government under New Deal leadership, or will we have real jobs in private enterprise under Republican leadership? We will have to make our choice."

DEWITT EMERY
Founder and president, National Small Business Men's Association.

"We had a whale of a lot of regimentation before the war, and if that trend is projected into the postwar period, there won't be enough freedom of enterprise left so you could see it with anything less than a 400-power microscope."

WALTER H. JUDD
U. S. Representative from Minnesota.

"To have a positive foreign policy is not sentimental idealism, or utopianism on our part. It is stern, inescapable necessity if we ourselves would be free, prosperous, and secure. To try to stand alone in this jungle of a world is to be overwhelmed."

HENRY A. WALLACE
Vice President.

"Democracy to crush Fascism internally must demonstrate its capacity to 'make the trains run on time.' It must develop the ability to keep people fully employed and at the same time balance the budget. It must put human beings first and dollars second."

J. EDGAR HOOVER
Director, Federal Bureau of Investigation.

"America must, if it is to defend itself, build up a barrier against the prophets of doom who would trade personal advantage for principle, who would debauch freedom into license, and who malign America by shallow, superficial, sugar-coated panaceas that are neither democratic nor defensible. Knowledge is a bulwark of defense. No finer job ever has been done in the world's history than that being performed today by the alert journalists representing American newspapers and magazines. With fidelity to American principles they have sought to separate the true from the false and fact from rumor."

JOHN W. BRICKER
Governor of Ohio.

"Leadership of the world cannot come to us by attempting to buy good will of other peoples, but by providing strong guidance in international affairs and keeping our commitments."

HENRY A. THEIS
Vice president, Guaranty Trust Company.

"Venture capital must be encouraged. People must be given an incentive to invest in productive enterprise, to work, and to save. This can be brought about only by a drastic reduction in income tax rates on corporations and individuals and the reduction or elimination of the capital gains tax."

EDWARD MARTIN
Governor of Pennsylvania.

"We must not have a farm party or a labor party or a conservative party or a radical party or any political organization which can claim that all the people of one section or one group or one class are members. If we want our free government to endure, each party should be a cross-section of the whole country."

CHARLES M. HAY
General counsel, War Manpower Commission.

"We must face the future united in our resolve to perfect our democracy at home and in our determination to coöperate with other nations to set up an international order based on the principle of the equal right of men to life and liberty and empowered to protect all nations and peoples against the bloody scourge of war."

WILLARD H. DOW
President, Dow Chemical Company.

". . . we shall need to define what we mean by 'employment' and by 'unemployment.' Everyone can be employed. But everyone cannot be employed at exactly the kind of job under exactly the conditions of wages and hours that he or she may want. And 'full employment' comes perilously near to 'directed' employment. There is no 'right' to work, but there is a responsibility to work. That gets us right back to the individual."

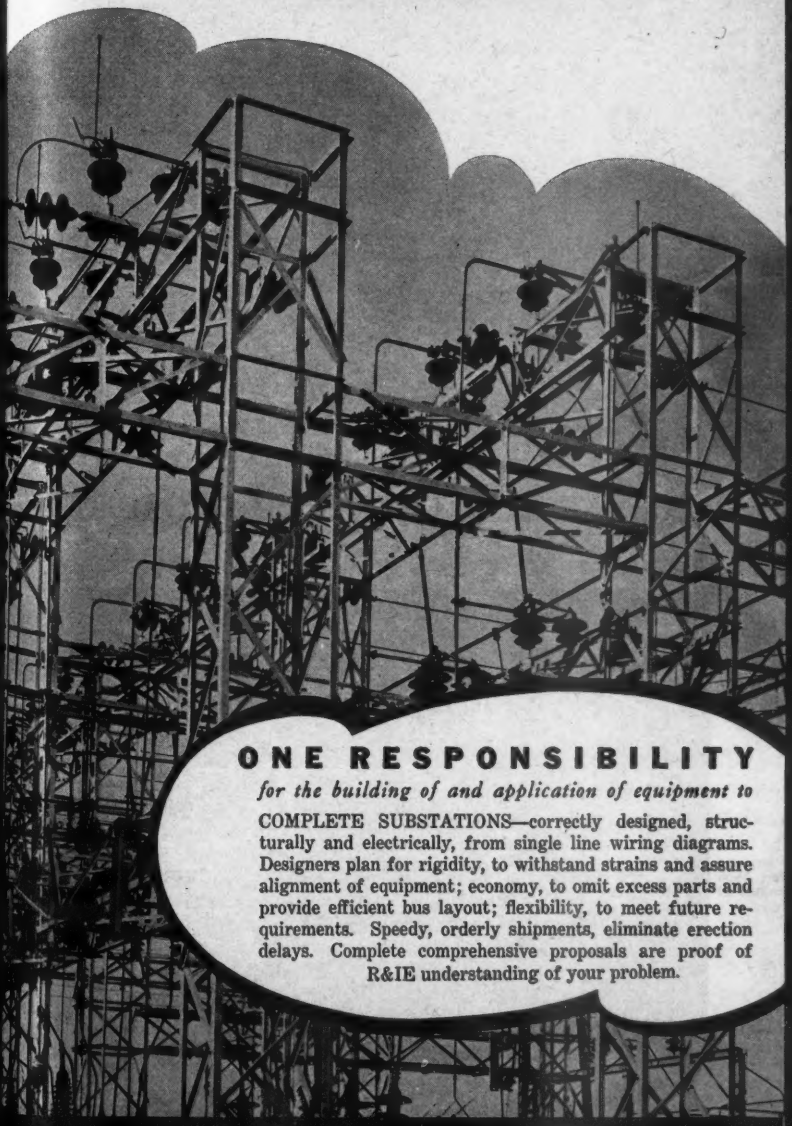
HENRY E. BODMAN
Counsel, Automotive Council for War Production.

"It has been well said that there are two principal things which menace human happiness. One of these is war and the other is unemployment. We live in the hope that we are approaching the termination of the war. Whenever this comes we will be immediately confronted with a war against unemployment. Unemployment may be a cause of war. But for the period of prolonged unemployment in Germany we might never have heard of Hitler."

ROBERT A. TAFT
U. S. Senator from Ohio.

"If we attempt to prescribe laws dealing with the internal affairs of the member nations [of any league of nations] or others, I believe it is more likely to cause wars than to prevent them. Furthermore, we must not impose on any nation obligations which seem unreasonable to those people, or obligations which we ourselves are unwilling to assume; nor should we force them to take part in disputes where they cannot see any interest whatsoever."

R&IE *the Switching Equipment* SPECIALIST



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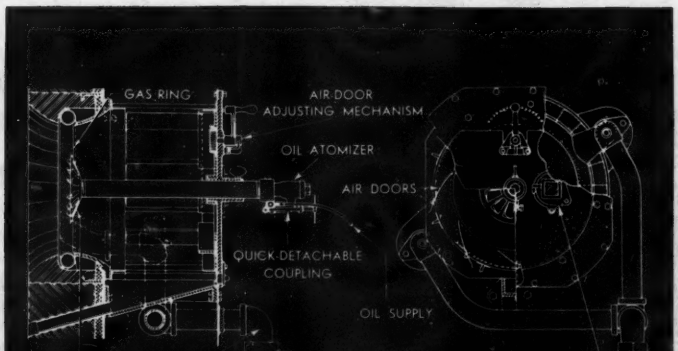
supplies steam at



Combination fuel gas and oil burners of this type are installed on boilers at Lake Charles.

View of Topping Units (right) and three Cracking Units (left) at new Lake Charles plant of Cities Service.

Lake Charles

Six Babcock & Wilcox boilers help to provide power and process steam for the new giant Cities Service refinery at Lake Charles, Louisiana. Two are the B&W Integral-Furnace type, and teamed with them are 23 B&W burners on these and other boilers in the plant.

Providing tankfuls for task fliers calls for uninterrupted production . . . makes "steam up" as important as "on stream" . . . demands a high standard of efficient performance from generating equipment. B&W Integral-Furnace Boilers are a "known quantity", proved dependable in war industries as in pre-war services . . . now serving steel mills as well as refineries; arsenals and aircraft factories as well as butadiene plants.

Experience gained in unprecedented war-time assignments added to years of steam progress, will be reflected in the service of B&W Integral-Furnace Boilers to post-war industry.

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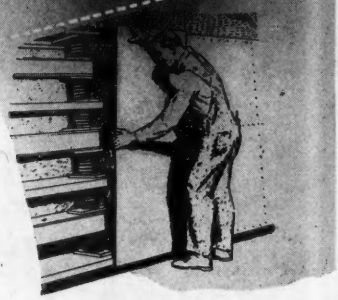

Weight-saving aluminum reduces the labor that has to be expended to do a job. Equipment manufacturers and employers are finding it increasingly important to bear this fact in mind.

The lighter weight of Aluminum Cable Steel Reinforced means that full reels weigh less. Handling from storeroom to the job is easier. With A.C.S.R., there's less weight to be maneuvered into place on poles and towers, so that work goes faster. Lines cost less.

The lighter weight of aluminum bus bars, housings, conduit, Alzak* Aluminum light reflectors, offers identical advantages; easier delivery to the job, faster erection, and lower costs all along the line. Doubtless, many electrical devices could similarly be made labor savers by cutting their weight.

Winning the war comes first, but aluminum is now being used for other-than-war purposes as the manpower situation permits. Our representative will be glad to discuss the availability of aluminum with you. ALUMINUM COMPANY OF AMERICA, 2134 Gulf Building, Pittsburgh 19, Pennsylvania.

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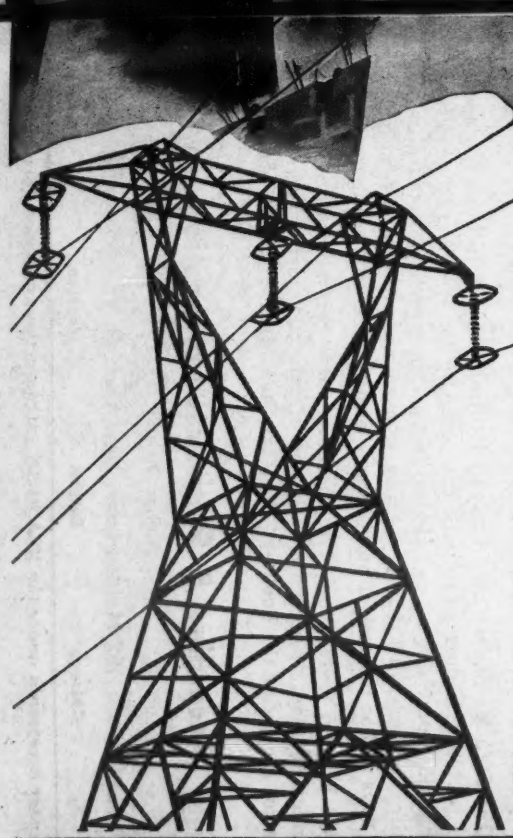
of the
"Liberty Line"



The transmission tower symbolizes American Victory production. Through the wires it supports flows the power that builds ships and planes and tanks. It is one of the reasons why America is strong and unafraid . . . a bastion in the line that will forever keep us free. Blaw-Knox is glad of its position as recognized leader in the production of transmission towers . . . a leadership due to the fact that Blaw-Knox towers consistently give the most dependable service over the longest period of time at the lowest cost. Engineers and industrialists are invited to bring their power-transmission problems to Blaw-Knox.

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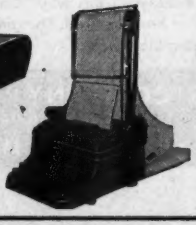

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EGRY "Do it in Writing"

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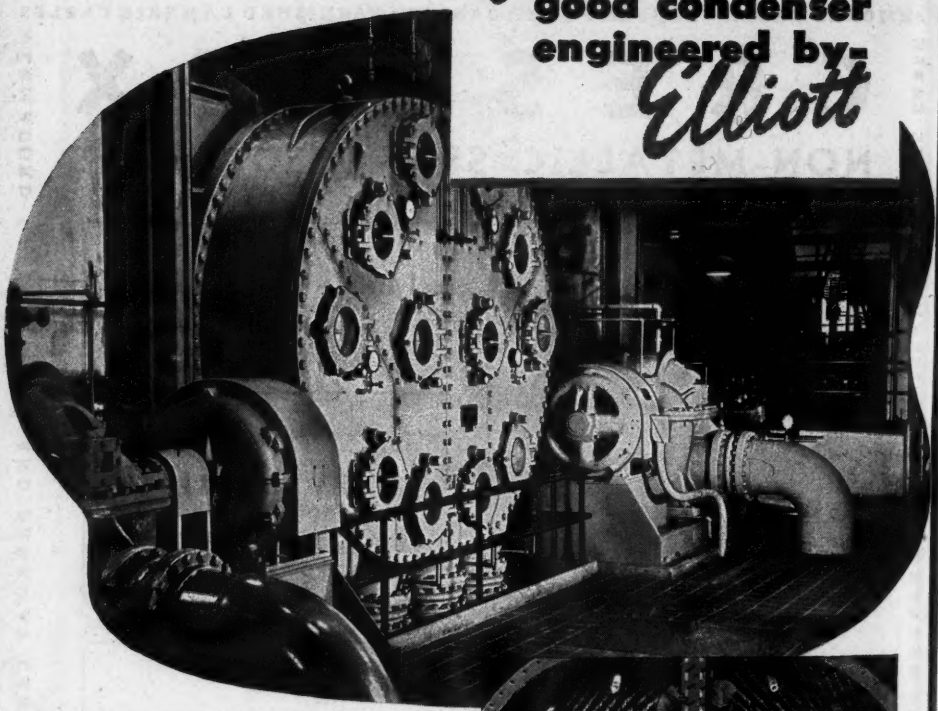

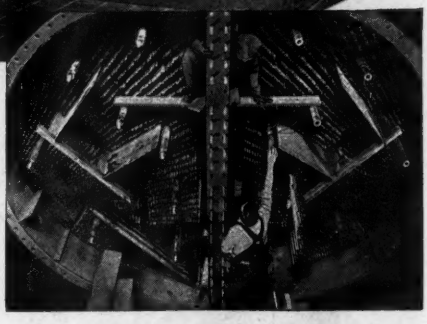

IN THE WESTOVER STATION of New York State Electric and Gas Corporation, this recently installed Elliott condenser serves a 35,000-kw turbine. The condenser contains 27,000 sq. ft. of surface, is arranged two-pass, with divided water-boxes, and is equipped with backflush water valves which enable the operator to change the direction of flow through tubes and water-boxes to remove trash. Beyond this, it is of typical Elliott design, featuring large areas, fan type tube arrangement, and no baffles to cause pressure drop by directional changes in steam flow.

This condenser is making a very good record, fully in line with the performance Elliott users expect and Elliott engineers demand, of Elliott condensers.

Tube arrangement tells the story of condenser performance. Elliott engineers have developed a system of tube spacing which insures the maximum number of tubes in direct contact with the incoming steam; regulation of steam velocity because tubes are arranged in converging straight lines, and maximum steam penetration. Partial tube supports, cut out in the steam lane section, result in complete longitudinal steam distribution with minimum pressure drop. Water collecting plates are provided to prevent blanketing of tubes in the lower half of the condenser.

ELLIOTT COMPANY
Heat Transfer Dept., JEANNETTE, PA.
DISTRICT OFFICES IN PRINCIPAL CITIES

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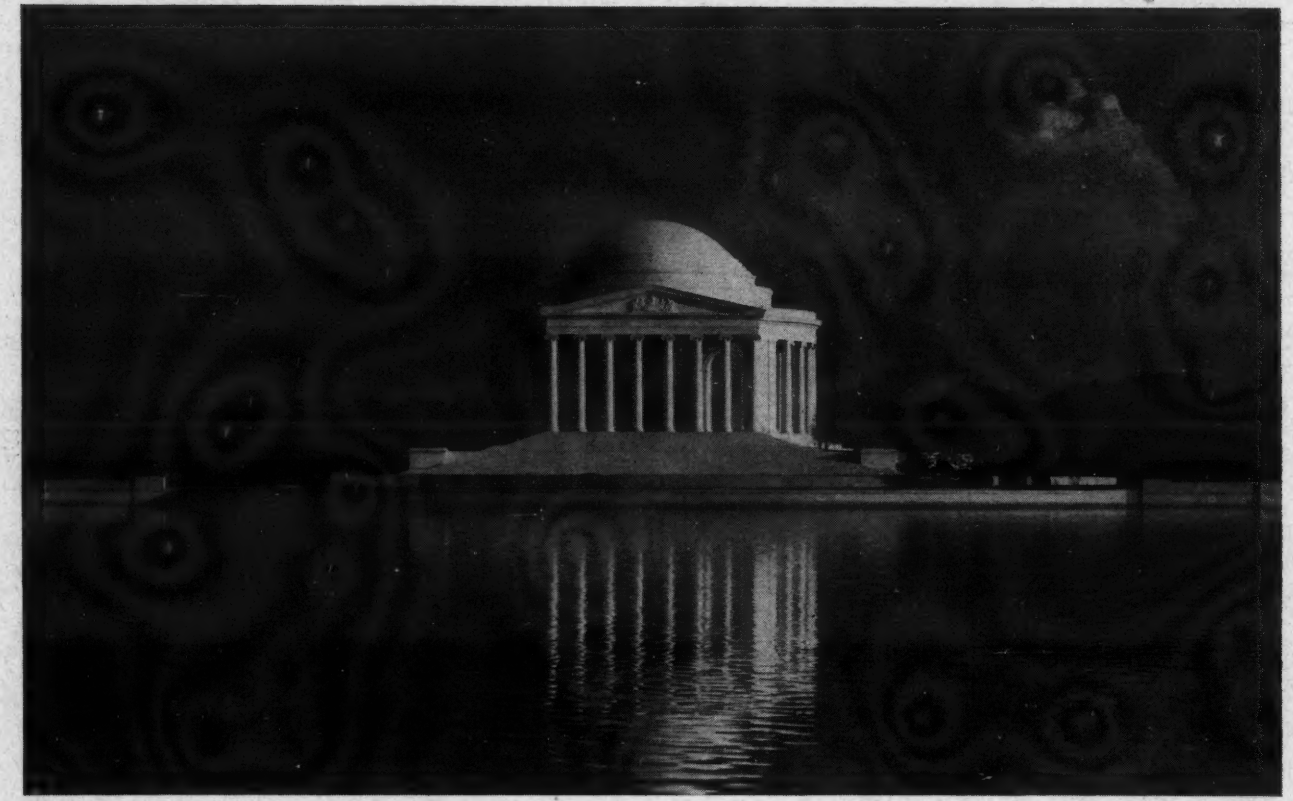
Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

OCTOBER

12	Th	¶ *United States Independent Telephone Asso. ends meeting, Chicago, Ill., 1944.* ¶ *Southeastern Electric Exchange starts meeting, Atlanta, Ga., 1944.*
13	F	¶ *Virginia Independent Telephone Association will hold meeting, Roanoke, Va., Oct. 26, 27, 1944.*
14	Sa	¶ *American Water Works Association, West Virginia Section, will hold convention, Parkersburg, W. Va., Oct. 26, 27, 1944.*
15	S	¶ *American Water Works Association, New Jersey Section, will hold meeting, Atlantic City, N. J., Nov. 2–4, 1944.*
16	M	¶ *American Welding Society opens session, Cleveland, Ohio, 1944.* ¶ *National Metal Congress convenes, Cleveland, Ohio, 1944.*
17	Tu	¶ *American Water Works Association, Southwest Section, convenes, Austin, Tex., 1944.*
18	W	¶ *Alabama Independent Telephone Association will hold meeting, Montgomery, Ala., Nov. 13, 14, 1944.*
19	Th	¶ *Pennsylvania Electric Asso. starts committee meeting, Johnstown, Pa., 1944.* ¶ *South Dakota Telephone Association starts meeting, Mitchell, S. D., 1944.*
20	F	¶ *Engineers Council for Professional Development convenes for session, New York, N. Y., 1944.*
21	Sa	¶ *North Carolina Independent Telephone Association will hold session, Southern Pines, N. C., Nov. 13, 14, 1944.*
22	S	¶ *National Association of Railroad and Utilities Commissioners will hold meeting, Omaha, Neb., Nov. 14–17, 1944.*
23	M	¶ *National Electrical Manufacturers Association starts meeting, New York, N. Y., 1944.*
24	Tu	¶ *American Water Works Association, California Section, opens meeting, Los Angeles, Cal., 1944.*
25	W	¶ *Missouri Telephone Association will hold conference, Kansas City, Mo., Nov. 21, 22, 1944.*



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Jefferson Memorial (Washington, D. C.)

Public Utilities
FORTNIGHTLY

VOL. XXXIV; No. 8 OCTOBER 12, 1944

Public Ownership and Surplus Government Property

Significance of discrimination against private industry in preference for certain classes of recipients or purchasers of left-over war material and other property, in pending congressional bills.

BY T. N. SANDIFER

PUBLIC ownership forces are making a new drive. As a result, private utilities may be headed for an era of Federal and state competition in the immediate postwar years.

During the war this issue was forced into the background. What has revived it now is the sight of an estimated more than $103,000,000,000 of surplus Federal war properties here and abroad, and, more specifically, some $16,000,000,000 of government-owned war plants.

There are and will be surplus metals, tungsten, zinc, lead, quicksilver, copper (2,000,000 to 2,500,000 tons of the latter), and fabricated products of these metals — wire, apparatus, fastenings, also mica, quartz, and numerous minerals. There will be trucks, industrial automotive equipment for all purposes, and nobody yet knows what else. The value of government-owned plants alone is nearly three times the total sum of post-World War I surplus, which was $6,000,000,000. It was termed "staggering" in 1919.

Thus, made to order for public ownership advocates, here are raw materials in fabulous lots, fabricated articles in surplus stocks, government-owned plants to make war materials that can easily be converted (so the argument runs) to making other things from the surplus materials, if need be; finally there are the REA coöperatives to use these products, made in these government plants. There are huge acreages of land, frequently in isolated areas of the country, just right for a power or water project, in many cases with the power already there, and perhaps even a plant near by. Is all this to be abandoned, liquidated by Federal authority within months after the war? No, say the public ownership spokesmen.

Since mid-1943 about fifty bills on the subject of surplus property disposal have been introduced in Congress. Some of the bills are in one paragraph. They would seek only to establish a preference for certain classes of recipients or purchasers; others are designed to establish the agency that would have charge of this huge undertaking. Still others include the disposal of surplus property in a broad total demobilization program; some would include the problem in brief provisions aimed to provide postwar veterans' benefits, or the promotion of "small business."

CONCRETELY, the Senate has approved S 2065. It includes many of the more important features of some of the other bills, and appears to have gone all the way on the question of promoting public ownership. However, legislation governing the disposal of surplus property cannot be regarded as final with this bill, whatever its ultimate fate. (It was going to conference with House legislators at this writing.) Such measures will continue to be proposed, and perhaps even adopted into law, as long as this huge reservoir of federally owned materials, lands, and plants exists.

To appraise this movement it is informative to go behind the various bills, even those no longer actively under consideration, and see what the advocates of "production for use" and public ownership are saying with respect to this windfall. (The fact that public taxes and the proceeds of war loans have paid for it does not alter its windfall aspect to these spokesmen, obviously.)

Secretary of Interior Ickes has, in the first instance, given his endorsement to S 2065 as being, in his judgment, "the best of the general surplus-property bills now before Congress."

As will be shown later, this bill leaves nothing to chance in favor of Federal, state, or municipal public ownership groups who might seek to utilize part or all of the suitable Federal surplus war properties for their programs, and it goes further, if anything, in favor of coöperatives, REA, etc.

ON an earlier bill, HR 5125, for disposal of surplus government property and plants "and for other purposes," he reported at the request of interested House committee members as follows:

"Certain provisions of this bill have distinct merit. For instance, there are specific provisions relating to the conditions under which surplus government-owned plants for production of synthetic rubber or aluminum which originally cost the government $5,000,-

000 or more shall be transferred. There is much to be said in favor of great caution in the disposition of plants representing such a huge investment.

"The provisions of this section might well be extended to power plants, magnesium plants, aircraft plants, powder plants, and many others, and the amount of limitation reduced to $1,000,000."

(S 2065 contains the $1,000,000 limitation.)

"In the interest of meeting present or potential government requirements for power, munitions, and other needs," the Secretary of Interior continued, "some of these plants should not be sold at all, but should be kept in stand-by condition, or integrated with existing government operations carried on pursuant to such statutes as those relating to the important government power developments in the Pacific Northwest, the Southwest, and the Tennessee valley."

(To this may be added, by the end of the war, the Missouri Valley Authority, a midwestern and extra-size copy of TVA, now proposed in pending bills.)

SOMEWHERE in this period the Secretary of Interior made a strong bid to be established by law as administrator of surplus real property, within the framework of the property disposal legislation. As he stressed, the handling of government-owned real estate, conservation districts, grazing lands, forests, etc., has been one of the prime functions of the Interior Department for years.

"The problems of postwar utilization and disposition of government-owned war property have been given thorough consideration by the Department of the Interior," he pointed out, in connection with this proposal.

"Attention has been principally focused on questions of real property . . . in addition to land, the department is vitally concerned with the ultimate disposal which is to be made of plants and factories constructed upon public lands or operated in conjunction with power projects developed and managed under congressional direction by this department.

"Through its activities relating to power and mineral developments," the Secretary of Interior recalled, "the department is also well versed in the intricacies of the problems pertinent to industrial plant disposition."

In fact, Mr. Ickes argued, "no agency of the government is better equipped or prepared to undertake the task of disposing of surplus realty than the Department of the Interior."

About the most severe criticism he apparently found to make with regard to HR 5125, which became the House

"Q . . . private utilities may be headed for an era of Federal and state competition in the immediate postwar years. During the war this issue was forced into the background. What has revived it now is the sight of an estimated more than $103,000,000,000 of surplus Federal war properties here and abroad, and, more specifically, some $16,000,000,000 of government-owned war plants."

version of the congressional surplus property proposal plan, was that while under its terms the Surplus Property Administrator "might designate the Interior Department" to handle the surplus realty involved, he was frankly skeptical that the administrator would do it. He therefore asked that Congress specifically allocate this responsibility to his broad, if already heavily loaded, shoulders. (See any list of Mr. Ickes' other duties.)

As this movement has progressed, Mr. Ickes does in fact, under S 2065, share with the Agriculture Department responsibility for handling surplus real property.

His ideas are therefore deserving of further exploration, as he has given them in advance of the actual legislation mentioned here.

First, he would insure through specific legislation that the agencies originally controlling the lands or plants in question would have to turn them over, rather than use their own judgment either as to retention or their disposition. Parenthetically, it has just been reported that the War Department has now decided to release for public use a quantity of silver-plated cavalry spurs which it acquired in World War I, and has been holding until the present. Obviously the chances of using this equipment in any orthodox manner are getting pretty thin, so they are now released. Mr. Ickes would have none of this indecision respecting surplus properties which he is to handle.

Moreover, he has recalled to Congress, under long-established practice affecting "the public domain," the President or the Secretary of Interior is permitted to set aside tracts "for virtually any public purpose," and to transfer jurisdiction over such tracts from one agency to another, without transfer of any funds. "The instances in which similar authority might be appropriately exercised in connection with war-acquired lands are numerous," he continued.

He mentioned, among others, some 15,000 acres of irrigable land within the Columbia basin project (for which area there are large public power plans), and, he added, with respect to numerous acreages and projects he listed, that along with any declarations in favor of small business, veterans, farmers, et al., there should be "definite restrictions to protect these people against the superior economic power of great wealth."

"Thus," he said, "I believe it to be essential that in considering disposal of government-owned industrial plants the main emphasis should be on continued production under conditions insuring independent competitive business enterprise."

Mr. Ickes recommended leasing, rather than selling such plants, and he commended a provision which appeared in the House bill that would compel the lessee to operate the plant at a specified production level over a given time, or lose the lease. He suggested a surplus property bill to embody many of the ideas he had put forth.

Secretary of Agriculture Wickard likewise had notions on the possibilities in disposal of surplus, both land and equipment. A large quantity of supplies and equipment could be absorbed in administering the more than

Final Form of Surplus Property Act

THE congressional conference report as finally approved by Congress removed many of the pro-public ownership features in the Surplus Property Act previously endorsed by the Senate, including: 50 per cent discount for sales to public power agencies and co-ops, outright donations under some circumstances, preferences and reservations in sale of property for REA co-ops.

Final form of the bill did retain a provision reserving "any power transmission line" determined to be surplus property for sale to public agencies where desired by the latter unless otherwise specifically authorized to be disposed of by Congress. It also included provisions permitting the sale and transfer of surplus property between Federal agencies and a general provision that Federal surplus property should be disposed of so as to permit "states, political subdivisions, and instrumentalities . . . an opportunity to fulfill in the public interest their legitimate needs."

175,000,000 acres of land in the national forests, he remarked, for one thing.

"Equipment is needed for telephone and radio communications," he pointed out, as well as for other purposes. Rural electrification equipment, especially, is needed, he said.

"Only slightly more than 40 per cent of America's farm homes are electrified, in spite of the rapid gains which the rural electrification program has made during the last decade," Secretary Wickard argued. "During the war period extension of rural lines has been brought almost to a standstill.

"Now, with improved farm incomes, a large part of the 5,000,000 rural families in unelectrified areas are anxiously awaiting the extension of electrical energy to their farms and homes. Completion of the nation's rural electrification program in the postwar period offers one of the really great opportunities for providing employment and creating vast demands for consumer goods. At the present time, the Rural Electrification Administration has $110,000,000 already allotted to co-ops which await only the availability of materials to begin construction.

"Also on file with the Rural Electrification Administration are applications for funds totaling an additional $100,000,000. These two sums represent only the beginning on the postwar rural electrification job."

IN this connection, Mr. Wickard pointed out that among the supplies of war materials to be declared surplus sooner or later, are large quantities of electrical equipment and materials, "including some power-generating plants, which the Rural Electrification Administration coöperatives could use to splendid advantage."

"I hope," he added in his comments to a congressional committee, "that Congress will direct a large share of these items be reserved for the Rural Electrification Administration coöperatives, 800 of which are already in existence."

Provisions to this effect will be found in S 2065. It is probably unnecessary to recall that private utilities have likewise been delayed in many expansion plans for the same reasons that the coöperatives have encountered, and could use some of this same equipment.

As the situation shapes up, however, coöperatives and other public ownership organizations could have first choice, and on very nominal terms, of virtually the largest stocks of fabricated materials for the purpose now in existence—the war surplus; and the private companies would be compelled to wait for resumption of full-scale production by private manufacturers, dependent perhaps on a postwar priority system. Granted that such production will be accelerated by official and private means, the disadvantage as opposed to the public power contender for materials and expansion aid is apparent.

One of the spokesmen in favor of retention of presently government-owned plants for use as "yardsticks" against the operations of private ownership, is Russell Smith, legislative secretary of the National Farmers Union.

ONE of the ways Congress can foster free enterprise, he told a congressional committee in discussing the various measures on property disposal, "is through the retention in government hands and operation under government auspices of a sufficient number of plants to serve as yardstick plants."

Here, he said, the experience of the country with TVA is instructive. One of the prime functions of this vast undertaking, he believes, is to serve in this way. He mentioned, also, the possibilities for government operation after the war of plants it currently owns for cold storage, and various food-processing purposes, "not to compete with private industry, but to do experimental work that private industry cannot undertake."

He urged a specific amendment to pending legislation, to provide for transfer to the REA of such surplus electrical equipment and materials as might be needed for extension of lines and services, to be made available through existing coöperatives. New coöperatives would be assisted into life also, under this amendment.

"Is it your thought," one Senator inquired, "that the coöperatives should pay for these materials?"

"Not necessarily," Senator Smith answered. "If the committee adopts the principle of use of surplus equipment of this kind free, as a public matter, I think all this should be included."

On this point a compromise meeting of minds occurred, evidently, by which the price, such as it might be, would not prove by any stretch of language to be unduly burdensome on the coöperatives or other public agencies receiving such goods.

THE present Surplus Property Administrator himself, in passing, has brought out at least one pertinent angle to the disposal of this property,

which might affect electrical appliances, for instance. He is opposed to being limited to selling surplus goods solely through the established trade channels. He explained that in one instance, concerning sale of some government refrigerators, the regular trade offered a lower price than did an outside bidder.

He would like to be free to take the higher offer.

Criticism has been expressed concerning the proposal to favor public ownership in the disposition of surplus war goods. It has been pointed out that surplus war legislation which purported to follow the blueprint outlined in the Baruch-Hancock report departs from the spirit of that report with respect to encouraging the continuation of free private enterprise and the protection of the same against government competition or unnecessary restriction. *The New York Times,* for example, commenting editorially on the Senate bill proposal to give discounts, reservations, and outright donations to public agencies, including REA co-ops, thereby discriminating against private bidders even at higher prices, stated in part:

> The net effect of this provision could easily be to create a series of so-called "yardsticks" throughout the country. But government yardsticks of this type tend to be less than 36 inches in length. If municipalities can acquire properties at half price, they can begin competing with private industry on an unequal basis. Such a development would lead to the very evils presumably to be avoided by the restriction placed on competitive operations by the Federal government.
>
> Instead of giving local communities a preferred position in the acquisition of surplus war properties, they should, if anything, be placed in a less favored position, particularly in connection with plant and equipment which can be used to compete with private industry. It is foolish to encourage private enterprise in one clause of the bill and to discriminate against it in another. The House bill did not contain this 50 per cent provision. It should be rejected by the conference committee.

VIRTUALLY all of the government-owned plants carry an outstanding option to purchase in favor of the contractor operating the plant. In its report on S 2065, a subcommittee of the Senate Military Affairs remarked that "Many of the options are held by great corporations which dominate their industries," and recommended that "to the extent that they are against public interest, these options should not be honored."

It therefore provided in S 2065 that every existing option be subject to an opinion by the Attorney General as to its validity. Such a provision has great potentialities. Magnesium producers

¶ "SINCE *mid-1943 about fifty bills on the subject of surplus property disposal have been introduced in Congress. Some of the bills are in one paragraph. They would seek only to establish a preference for certain classes of recipients or purchasers; others are designed to establish the agency that would have charge of this huge undertaking. Still others include the disposal of surplus property in a broad total demobilization program; some would include the problem in brief provisions aimed to provide postwar veterans' benefits, or the promotion of 'small business.'* "

have been under fire as a monopoly, for illustration. Magnesium processes require electric power, and presumably a very considerable amount of power which has been necessary for magnesium manufacture might become free with curtailment of this output. The magnesium plants are largely government financed. These and similar properties would be subject to check as to whether their private operators' options are "in the public interest."

The possible origin of this provision is worth searching out. Offhand it might be ascribed to the Attorney General himself, who spoke at some length on the problems of property surplus early in the history of the legislation. Even so, he had strong support from the CIO. The legislative representative of the United Steel Workers of America (CIO) Robert K. Lamb, said in the course of a forceful discussion of the point, "I, for one, think that the Attorney General ought to be consulted with respect to the validity of such options."

He added later, "I would like to see this considered by the committee as a proposition to protect the government and the people with respect to outstanding options."

The committee evidently did consider it.

MR. LAMB had some other suggestions.

"I think," he said, "we ought to take the surplus property as a great windfall which the war has brought us and not consider it as a menace to the American economy. One of the things we can do is to explore the possibilities of public use."

By that, he explained, he meant "public use of both goods and facilities by state and local bodies and possibly by certain Federal agencies, educational institutions, and other institutions under such departments as the Department of the Interior and Department of Agriculture, and so forth."

Finally, said Mr. Lamb, "I think we ought to recognize this is not something we are going to settle by the passage of one bill, and consequently we must from time to time review this thing, in consultation with these outside groups such as are mentioned . . ."

There were a number of other expressions of views along the lines of those which have been cited here. In addition there were literally volumes of letters to members of Congress on the subject of disposal of the surplus property accumulating from the war—adult "letters to Santa Claus," in effect, but Congress took heed of both the letters and the ideas expressed before various committees.

As the bills were presented to the full House and Senate, respectively, they appeared to cover most of the ground bespoke by the various persons who made suggestions or outright demands on the subject. The Senate version, in particular, was an appeasement document of the first order, with respect to these proposals. It paved the way for large-scale transfers of surplus properties from one Federal agency to another (see Mr. Ickes' views, above); sale or lease of surplus property to states, political subdivisions such as municipalities and conservation districts, publicly owned utility systems, coöperatives, and nonprofit groups, including those meeting the REA qualifications, at magnanimous reductions in price, discounts, and other terms.

Disposition of Surplus War Goods

"CRITICISM has been expressed concerning the proposal to favor public ownership in the disposition of surplus war goods. It has been pointed out that surplus war legislation which purported to follow the blueprint outlined in the Baruch-Hancock report departs from the spirit of that report with respect to encouraging the continuation of free private enterprise and the protection of the same against government competition or unnecessary restriction."

NEEDLESS to say, private utilities got very little encouragement, and if all the provisions of the original bills were adhered to, might have had reason to be actually alarmed.

Some of the more serious adverse effects on private interests in a postwar rehabilitation period were so apparent to the cooler legislative heads, however, that the provisions carrying threats of this nature had little chance of final approval. The point made by the CIO spokesman is worth remembering, nevertheless—that this is not a matter of one bill, but something that should be kept in flux, through review, and, by implication, more legislation.

In the background is evidence already that current legislation will not meet the intentions or ideas, or the conceptions of the subject of everybody who now appears to have a hand in dealing with it. Just who will be included finally among these is speculative at this writing. It is perhaps pertinent to recall here some recommendations of the late National Resources Planning Board which were transmitted in late 1943 to Congress from the White House.

This report, as broadly interpreted by members of Congress not too favorably disposed to the board's ideas, envisioned, among other ventures into socialized management of business and economic life, a joint government-private stockholder supervision of such industries as aluminum, magnesium, etc., built or financed by the government.

As some of these members now express the fear, while Congress technically killed the National Resources Planning Board, a considerable number of its elements are to be found in various governmental posts today, and, by implication at least, might have a hand in the eventual policy making on the disposal of plants, facilities, and goods.

As a balancing item against this rather leftish approach comes word that Secretary of Commerce Jesse Jones has telegraphed 376 industrialists operating the 586 war plants owned by Defense Plant Corporation, a government subsidiary, as follows:

> While we do not know how soon the Defense Plant Corporation buildings which you are leasing will become surplus to the war effort, we would like to know whether or not you contemplate acquiring the property for postwar civilian activities, either under your option or under negotiation. . . . We will greatly appreciate your advising us as quickly as possible. We need the information to aid us in planning to keep as many of the properties as possible in production either through sale or lease.

These properties aggregate a cost to the government of $4,720,000,000 some operated for account of RFC agencies, others under lease to the operators, which leases provide for cancellation when the product is no longer needed in the war effort.

Mr. Jones' telegram is susceptible of interpretation to mean that he hasn't heard of some of the ideas which have been set down here, and is planning to proceed in an orderly fashion to put such of these plants into private hands as are practicable for civilian use, and perhaps close out the others. They could become surplus, but he does not say so.

Like so many other complex problems that have arisen, this one now appears to be headed for loose supervision under a White House agency—loose in the sense that any tangles in actual administration can be passed up to this agency, and, if need be, to the President. In this event, the field of policy making would be fairly accessible to the various forces in the capital, subject only to the interpretation placed on the law as finally approved.

One aspect of this matter of sale of government plants for other operation was opened up by acting chairman of WPB, J. A. Krug, recently. Bearing in mind that some of them are relatively new production undertakings possibly, he said that "We have people who understand a great deal about the underlying economics of the government plants that were built. Their skill and their experience will be available to someone who wants to undertake the purchase of one of those plants."

WPB, Mr. Krug reported, is participating in the work of the Byrnes committee (Office of War Mobilization group) to encourage the use of these plants by making WPB facilities available.

Another side light on public ownership possibilities, with respect to plants, power, or other facilities, was suggested by Mr. Krug's prophecy of a return to a 1939-plus production level. The question suggests itself, will there be room at this level for many public ownership experiments in production for use, or for any other purpose? The country will not be in the mood for subsidizing any such operations regardless of loss, according to the precedents of other years, and a subsidy is the only answer.

Still another is Mr. Krug's determination that the vital needs of the utilities, among several critical industries he mentioned, be met at the earliest possible moment. Since a number of the manufacturers normally supplying these needs might conceivably be delayed in getting into production, through the physical necessity of adjusting their plant to the new demands from old customers, these "vital

needs," as a matter of practical necessity, might have to be met from stocks on hand.

He did not go into the latter detail, but it is fair to guess that his overlying policy, that the needs must be met, would have a strong bid for supremacy in any tangle with a bill not too firmly worded. There might have to be a compromise, in short, between current public demands for service from established operating facilities, and less forthright needs from projected installations by a public group.

Historical Oddities of the Cabinet

MORE Secretaries of State have become Presidents and Chief Justices of the Supreme Court than all the other Cabinet officers in our national history put together. There were six of our Secretaries of State who later moved into the White House: Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, Martin Van Buren, and James Buchanan. Three Secretaries of State later became Chief Justices: John Jay (who had the unique distinction of being not only the first Secretary of State, but also the first Chief Justice), John Marshall, and Charles Evans Hughes. One other ex-Secretary of State, William R. Day, became an associate justice.

How do the other departments compare? Only two have produced Presidents at all. Three former Secretaries of War made the grade: James Monroe (also a Secretary of State), U. S. Grant, who served for a short time under Johnson, and William Howard Taft (also a Chief Justice). The only other Cabinet alumnus to become the Chief Executive was former Secretary of Commerce Herbert Hoover.

THE Justice Department, although never producing a President, has, understandably, turned out a fair crop of material for the highest bench. Two former Attorney Generals became Chief Justices: the incumbent, Harlan Fiske Stone, and the celebrated Civil War Chief Justice (of Dred Scott decision fame), Roger Brook Taney, who narrowly missed also serving as Secretary of Treasury when the Senate refused to confirm his appointment to that post by President Jackson. Other ex-Attorney Generals to reach the highest court were: Joseph McKenna, James C. McReynolds, Frank Murphy, and Robert S. Jackson.

OUR present Secretary of War, Henry L. Stimson, is the only American to receive three different Cabinet appointments from three different Presidents. In addition to service in the present Cabinet, Stimson was Secretary of War under President Taft and Secretary of State under President Hoover. John C. Calhoun might be considered as technically in the three-time Cabinet member class, by virtue of his election as Vice President in 1824. Prior to that he was a Secretary of War and later he became Secretary of State.

ASIDE from those already mentioned, there were five other Cabinet officers, who "doubled in brass," so to speak, by occupying two different Cabinet chairs: Edmond Randolph, serving under Washington, was our first Attorney General and also our third Secretary of State. Hugh S. Legare performed the same combination of duties in the Cabinet of President Tyler. Isaac Toucey was Polk's Attorney General and Buchanan's Secretary of Navy. Charles S. Bonaparte did the same double feature for Teddy Roosevelt. Edwin M. Stanton was Buchanan's Attorney General and Lincoln's Secretary of War.

Battle of the Spectrum

All nations, says the author, have realized the immense value of radio control and so the control of the air waves—or frequencies—or spectrum—will be fought for after the war by every nation.

By HERBERT COREY

We won a battle on D-plus-4 Day. Not only against the Germans, but against the British, who are our good friends and present allies. Maybe it was not quite a battle. It might more properly be rated as a skirmish, with the battle still to come.

Anyhow, we won it.

We won the right to transmit news from the battlefields direct to New York, instead of relaying it through London.

That might seem to be a rather insignificant triumph. But it isn't. One of the most formidable of the postwar problems which we must face is that of the control and the sharing of the "frequencies" over which signals are sent by radio transmitters. It touches every one of us. It is possible that not one in a million of us will ever be actively affected by a future decision on Poland's frontiers.

Every one of the 137,000,000 of us is personally interested in radio. That skirmish on D-plus-4 Day in Normandy is a spotlight which illuminates one phase of the postwar radio problem. It might more accurately be said that it emphasizes the fact that there is a problem. Let's have a look at it.

It sometimes appears that the American correspondents with our armies in Europe are leading the way. They rattle through No Man's Land in their jeeps almost ahead of the armies. Sometimes they are ahead. They got into Paris before the Germans got out. Two were made prisoners of war because they rattled right into the enemy army. They sheltered behind corner houses in Marseilles and watched two factions of French fight for possession of the city the Germans had not yet relinquished.

They were full of speed and vinegar. They took every imaginable chance to get their stories on the air first. That is the American way. We want whatever we want in a desperate hurry.

But before D-plus-4 those stories for America, written by Americans, of American armies, had all been routed through London. That meant a pos-

sible delay of from thirty minutes to thirty hours as compared with stories about the same fights and the same men sent through London to New York by British correspondents. This is not intended as a criticism. The British have a birthright to get the best for themselves out of any situation. So have we. There is not a reason in the world why we should not have said to the British:

"Be yourself, Brother. Don't try to give us the elbow angle. We know that if these stories of ours go through London you can—if you wish—delay them, censor them, cut them, even hold them up altogether. That is your privilege if they go through London.

"Incidentally it costs more to relay our stories through London than to send them direct. And you get the extra fee."

For some reason which has never been stated the Frequencies Bureau of the U. S. War Department had insisted that the stories be relayed through London. No criticism is offered. There may have been a good reason for it. The British had insisted on the relay, and the reasons they assigned have never been made known to the public. The American Press Wireless, which handles all the radio material for the American Army, wanted to take portable transmitters right up to the front line, with censors sitting at the desk. In that way the correspondents would have been saved the long flog back to the nearest Army headquarters. The saving in time would have meant hours. Perhaps days.

The Frequencies Bureau said "No."

Then the Press Wireless pulled a fast one.

It had so improved a low-power transmitter that its signals could be heard in New York. It was taken for granted that this midget gadget could be heard no farther than London. The English made no protest against its use. The Press Wireless asked American Army field headquarters for permission to use the little thing. The Army said: "Why not?"

So it was used on D-plus-4 and it worked like a charm. Not only could its signals be heard in New York but it transmitted voice also. Its despatches beat the stories relayed through London by so many minutes that editions were caught that would have been missed. The stories of English origin came in second. Or perhaps they also ran. The English made a protest that was heard by the War Department's Frequencies Bureau.

"You cannot do this thing to the English," said the FB. "We will not let you." "But we are using our own frequencies and they are not being used otherwise. We are getting the stuff on American presses as it never got there before."

The FB said that made no difference. The Army's field headquarters was told to stop this business of permitting the Americans to beat the English in sending despatches of their own fights by their own troops to their own people. Army field HQ stopped the Americans. Press Wireless said to FB in Washington:

"You can't stop us now. You don't dare. If you think you can handicap the American Press in favor of the British you are so wrong you are funny."

So the FB threw in its hand and the Press Wireless went on sending. It played fair. The British correspondents were permitted to use the American transmitter on even terms. The outcry from London, which had enjoyed a sweet advantage all over the map, was stilled. No one wanted to open that particular Pandora's box. Too many queer things might pop out.

The significance of the story is that not only the British, but other nations, have realized the immense value of radio control. Some Americans also know it. The control of the air waves —or frequencies—or the spectrum— will be fought for after the war by every nation. There are not enough frequencies to meet all the present demands, or there would not be if the war were to come to an end and all of today's demands were suddenly concentrated. And tomorrow's demands will be perhaps quadrupled.

No one knows. For no one knows what has been done under cover of the war. If any one does know he could not speak at this time.

TELEVISION will be a heavy participant in the fight for more frequencies. That much is certain, but no one can say what tomorrow's television may be. Today's television is not satisfactory, but tomorrow's television sets may cover wider fields at such speed that every play in football, as an example, may be faithfully transmitted. The voices may be heard. The hoof beats of race horses may come in, along with the roar of the crowd and the shouts of the newscasters. A sea battle may be shown to every tragic detail and the pounding heard of the big guns and the rattle of the little ones.

Maybe these possibilities will come true. Railroads are already directing the running of their trains to prevent tragedies. A department store may ask feverishly of the driver of Truck 25 why he did not deliver her evening frock to Mrs. Filbert. News may be sent free of interference to every quarter of the globe. That is the hope of James Lawrence Fly, chairman of FCC. Police chiefs now hold 2-way talks with their prowl cars. Tomorrow loud-speakers may box in neighborhoods or cities so that every man with good ears will know what has happened and who did it and what he looks like before the criminal can get away. Shipmasters will be able to call for help or warn of storms or submarines. The possibilities are endless.

Or they would be endless if there were more frequencies in the spectrum.

It may be possible—it certainly is

¶ "IT *sometimes appears that the American correspondents with our armies in Europe are leading the way. They rattle through No Man's Land in their jeeps almost ahead of the armies. Sometimes they are ahead. They got into Paris before the Germans got out. Two were made prisoners of war because they rattled right into the enemy army. They sheltered behind corner houses in Marseilles and watched two factions of French fight for possession of the city the Germans had not yet relinquished.*"

probable—that engineering advances may in effect multiply these frequencies. But with every multiplication the complications are likewise multiplied. International, political, business, life-saving, entertainment—

So let us begin at the beginning.

To most of us it is as incomprehensible as the miracle of the loaves and fishes. According to Dr. J. H. Dellinger, chief of the radio section of the Bureau of Standards, "there is nothing really more mysterious about radio than about an electric motor. The principles of the one are about as well understood as the other."

But there are two principal limits to the potentialities of radio.

"The available number of radio broadcasting channels is definitely limited; the other is the existence of vagaries or irregular actions of the radio waves in their passage between the transmitting station and the receiver. So long as those who would find a way out of radio's present difficulties neglect these two limitations or imagine that they are but temporary difficulties which are liable to be swept aside at any moment by the progress of invention, the difficulties will remain."

The second difficulty may be ignored for the moment. As to the first:

"Radio is carried by means of electric currents and waves of very high frequency, ranging from approximately 15 kilocycles to 30,000 kilocycles per second. Each station must have its own little band of frequencies in order that it may be received without interference. Each band is 10 kilocycles wide. There are in this range 95 bands each 10 kilocycles wide and therefore only 95 independent channels for broadcasting stations. Of the 95 there are really only 90 available in the United States, as 5 are reserved for Canada.

"Set this fundamental fact against the actual existence of 540 active broadcasting stations and you have an astonishing situation. There are, obviously, on the average 6 stations on each broadcasting channel. All 6 are in potential conflict with each other. The situation is only palliated by the fact that many of the stations are of small power and far apart so that each can serve a small local area without destructive interference from the others."

Interference increases as more and more of the stations increase their power and aspire to serve large areas. When stations using the same channel are located near each other they can only operate through agreements to divide the time and not broadcast simultaneously.

"This is an economic absurdity," continued Dr. Dellinger. "It is as though two or more railroad companies had franchises to operate trains on the same track, each taking turns and having its whole stock and plant absolutely idle when not using the track. The alternative is to have many stations on one broadcasting channel, of limited power, serving small areas. They will eventually have to be kept on special channels, precluding interference between them and the more powerful stations of national scope."

Why not use more of the radio spectrum for broadcasting?

Because all the rest of the radio spectrum is otherwise engaged. The frequencies below those of broadcast-

Tomorrow's Television Sets

"TELEVISION will be a heavy participant in the fight for more frequencies. That much is certain, but no one can say what tomorrow's television may be. Today's television is not satisfactory, but tomorrow's television sets may cover wider fields at such speed that every play in football, as an example, may be faithfully transmitted. The voices may be heard. The hoof beats of race horses may come in, along with the roar of the crowd and the shouts of the newscasters. A sea battle may be shown to every tragic detail and the pounding heard of the big guns and the rattle of the little ones."

ing are extensively used and have been long established for ship communication, transoceanic messages, aids to navigation and government, and other uses which are:

"Utterly essential and for which radio is the only available instrumentality. While the frequencies at the other end of the spectrum, above broadcasting, are not yet so crowded, they are largely required for aircraft, amateur, commercial, military, and special uses."

A radio communication channel is a precious thing, the franchise to use it a valuable asset. The very low frequencies are the ones used for transoceanic communications, in competition with the cables, and their importance is so great that:

"It is not at all unthinkable that diplomats of the future will put forth greater efforts to secure or defend radio frequencies for their nations than to protect tariff rights or territories. Another powerful reason against placing additional broadcasting stations outside the present broadcast frequencies is that such stations could not be received by the present broadcasting sets. This would be a hardship on millions of people."

A RADIO receiving set is an instrument for tuning to a particular frequency in the radio spectrum and excluding higher and lower frequencies. The spectrum includes frequencies from about 15,000 to 30,000,000,000 cycles per second. A kilocycle is 100,000 cycles. In order to avoid confusion the frequencies are often stated in terms of megacycles, which are 100,000 kilocycles. A chart recently

issued by the General Electric Company shows that the radio frequencies occupy a relatively small portion of this chart. Above the radio spectrum are the heat waves, the light waves (the entire prism), and finally into the X-rays, gamma rays, cosmic rays, etc.

To go back to the beginning:

There are only so many frequencies in the radio cake. Only so many slices may be cut. Nothing can be done about this by Congress or the nations. No more slices can be added.

But there may in the future be found a way of slicing those slices thinner.

When the Press Wireless began to send news to New York direct, instead of by relay through London, it did not add any waves. It had a frequency that was not being used. It merely improved its transmitter in Normandy so that it could send on that hitherto vacant frequency without unduly interfering with the messages being sent by the British from London. No discovery had been made. The engineers for Press Wireless had merely outdone themselves in engineering. It is a significant story because electronics are growing bigger and better all the time. If anyone knows what has been done by the electronic engineers as a result of the war no one would be permitted to say. It is known that a gate has been opened into a new world.

Not many years ago radar was just something to play with. It was not a secret to anyone—the Germans knew as much as we did, and perhaps as much as the English did, and certainly more than the Japanese did—but no one cared very much. At that time it was of no particular value — like a Roman gold piece in a museum. Just something to look at. The war made it a principle of life itself to the fighting navies.

There are other secrets now hidden by the cloak of war. When peace is declared they will begin to leak out. Some of them are government-owned, some are privately owned, and some, no doubt, are still in the laboratories being worked over. No one will prophesy about what may come. Everyone is willing to say that many things may come.

And every government, business, aircraft company, every ship at sea, the 30,000 amateurs, the communications, telephone and cable, the reformers, revolutionists, soldiers, statesmen, enemies, and friends—practically everyone—are getting ready for the fight to come.

Something must be done to control radio. The slices must be handled by some authority or agreement, so that the next-door slices may not reduce them to crumbs. The many interests must be governed. Suppose the United States insists on the right of its free newsmen to distribute everywhere in the world the news they have gathered all over the world, and Britain or France, or, in some distant future, Germany will refuse permission to the United States to operate receiving stations on the foreign soil?

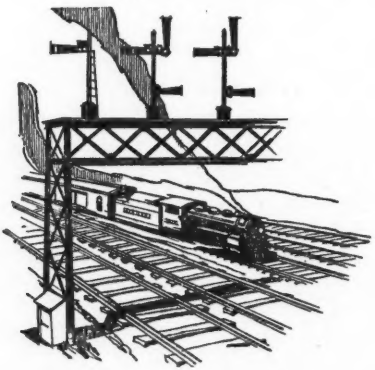
So there is a quarrel, and right off it's a humdinger because we remember the misleading propaganda certain other nations have poured over us.

Reverse that position and see what you have. Would we assent to Germany sending us news that Germany says is honest and we say is not? Amer-

ican broadcasting companies want the right to broadcast their programs. There is present opposition to that. Are the 30,000 amateurs to be boxed up so that other people can use the waves they have thought their own? How much of the radio frequencies shall be seized by government at the injury of privately owned concerns? Will it be necessary for government to own and operate transoceanic stations—and perhaps ultimately national or even local stations—to keep out people of whom government may be internationally and nationally and politically afraid? A 2-second flash might upset apple carts all over the world.

The State Department has already held one meeting of interests in an attempt to decide on what the problem may turn out to be. The FCC has held others. Diplomats have examined the bones in locked closets. When all the other spots are wiped out we may have a grand, sweet world, bossed by angels singing songs to the music of dulcimers.

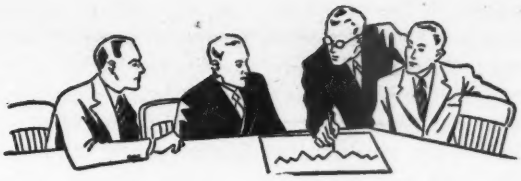
But if all the sweet world does not at least face up honestly to the radio problem there will ultimately be hell to pay.



"THE public must be served, and it will determine for itself whether it will pay the rates and fares that are necessary to be charged by the railroads for their services; and if the public will not pay them, it will seek other means of transportation to as large an extent as possible.

"Labor therefore has a vital stake in the problem of meeting competition, and it must take stock of itself and determine what is best for its own interest, and whether three-quarters of a million high-paying jobs are better than 1,000,000 good-paying jobs. Capital must have a fair reward, and capital, if it is to be employed in the railroad industry, will demand good credit."

—WILLIAM WHITE,
President, Delaware, Lackawanna & Western Railroad.



Utility Rates and Taxes

Popular misconceptions in wartime rate-cutting philosophy, in the opinion of the author, as to excess profits taxes, benefits of increased business, and effects of refunds and rate cuts on the companies.

By OWEN ELY

THE life story of the average electric utility seems to be a constant struggle against declining rates and rising taxes—the upper and nether millstones. Since 1926, which used to be called a "normal" year (being used as 100 per cent for many indices), the electric output of the power and light companies has nearly trebled, but operating revenues have only doubled. Residential average rates have declined nearly one-half, industrial and commercial 40 per cent, and the average of all rates slightly less.

Even at that the utilities would have done very handsomely for their stockholders if taxes had not jumped to over five times the 1926 figure—from 9.4 per cent of revenues to 24.5 per cent. The increase has been steady and inexorable, without a single interruption even in the year 1932. However, during the years 1926-1931 taxes remained in fairly constant relation to gross, the ratio increasing only from 9.4 per cent to 10.4 per cent. With the New Deal antiutility policies at work, the ratio began to rise rapidly, reaching 17.7 per cent in 1940, and with the added burden of wartime taxes the ratio has reached 24.5 per cent.

COMPLETE details are not available prior to 1937, but beginning with that year we have a breakdown between Federal and other taxes. State and local assessments have increased only 12 per cent since that year, and the ratio to revenues has actually declined from 10 per cent to 8 per cent. But Federal taxes have increased over 4½ times—from about half the amount of the local taxes to nearly double. Of the total Federal taxes in 1943, income taxes accounted for some $200,000,000, excess profits $192,000,000, and miscellaneous $65,000,000. The gain over 1942 of $60,000,000 (15 per cent) was practically all in the excess profits bracket.

The decline in utility rates has been somewhat slower during the war than previously, due doubtless to recognition of rising costs and taxes by the state commissions. But recently a number of rate cuts have been initiated in different parts of the country, based on

the theory that some of the huge tax payments made to Washington might as well be diverted to the benefit of consumers, or taken in the form of municipal taxes. Under the present setup those companies which pay excess profits taxes would lose only 14.5 per cent of any rebates to customers, it is argued, since Uncle Sam would absorb the remaining 85.5 per cent through the reduction in Federal taxes.

As noted and well analyzed in several articles which have already appeared in this publication, this movement apparently started in Detroit in 1942. The city held that Detroit Edison rates should be cut so that the company would not have to pay excess profits taxes of over $8,000,000. The public service commission of Michigan ruled that taxes, being no different from other expenses, so far as the utility is concerned, must be taken into account before figuring "fair return on investment," and that on such a basis the company was not earning too much money. The request for a rate cut was, therefore, denied. Then came that 4-to-3 decision on appeal by the supreme court of Michigan, which directed the utility commission to reconsider its reasoning. Subsequently, to complete this brief recital of the Detroit Case, the commission recently ordered Detroit Edison to rebate $10,450,000 to consumers and directed other utilities to prepare for possible similar orders.

Meanwhile, the impatient Detroit authorities had also imposed a 20 per cent tax on the gross revenues of local utilities. As Prentiss M. Brown, former OPA head and now board chairman of Edison, remarked, "the city and the ratepayers both take the money, some $10,000,000 each, unless the city tax is declared invalid. . . . We do not know what the courts will do with it." A further appeal by the utility is, accordingly, in progress.

Other sections of the country have been following the lead of Detroit. Cleveland ordered a reduction of $1,200,000 and Cincinnati is planning a gas rate cut. Other moves for customer refunds or rate cuts have been reported in New Jersey, Georgia, and Oregon. Recently, President Sachse of the California Railroad Commission issued a public statement, claiming that the excess profits taxes were really being paid by customers of the utilities "in addition to the profits which are allowed the utilities in the fixing of the rates as a 'fair return.'" This would seem to imply that rates in California have been raised to help pay for Federal taxes, though on the contrary average kilowatt-hour revenues have continued to decline there, as elsewhere, during the war period.

Some of the commissions, however, have maintained a more cautious attitude. Some have followed the old Supreme Court ruling that taxes are a legitimate expense. Some others, such as the FCC, have distinguished between prewar taxes and the added wartime taxes, holding that the latter should be imposed on stockholders rather than consumers. Still others, such as the District of Columbia commission, are willing to go a step further and include in costs part of the war taxes. The Connecticut commission feels that *all* taxes should be included in costs (because of the varying application of war taxes to com-

panies with different capital structures), but that during wartime the utilities should be penalized somewhat by having the "fair rate of return" reduced, though this would be restored to the old level after the war.

The utilities had hoped that the Treasury Department would resent the diversion of war taxes to the pockets of utility consumers, at a time when all are being urged to "back the attack." But Secretary Morgenthau, possibly after consulting the White House, indicated that he was quite in favor of any move to cut utility rates, and that the Treasury could get along without the taxes thus canceled.

This wartime rate-cutting philosophy appears due to several popular misconceptions:

(1) *That "excess profits" taxes mean that the utilities are earning more than a fair return on investment, usually considered around 6 per cent.* This is untrue. The utilities' net income in 1942-3 was substantially lower than in the three preceding years, and averaged about the same as in the depression year 1932. It is true that earnings *before* Federal taxes increased substantially, but this was due principally to the ability of the electric companies to sell huge blocks of industrial power on a round-the-clock basis to munitions plants. This means very heavy wear and tear on stand-by plants, many of which are being operated steadily for the first time in many years. There is probably a considerable amount of deferred maintenance not reflected in operating expenses. These extra earnings are a wartime phenomenon and are already beginning to decline along with aluminum plant cut backs and cancellation of war orders.

(2) *That residential customers (incidentally, they are voters) should benefit by the utilities' increased industrial business.* The rate-regulating authorities are usually more concerned with residential rates than with industrial charges. To grant residential customers refunds and rate cuts on the basis of a sudden increase in industrial revenues (the latter having increased $330,000,000 since 1940, while residential revenues gained only $133,000,000) is, to say the least, of debatable justification.

(3) *That utility security holders won't be hurt by these refunds and rate cuts.* This is untrue since 14.5 per cent of the reduction will come out of net income—already lower than pre-

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war. In the case of companies not now in the excess profits tax bracket (or which may leave that bracket) stockholders may have to stand 60 per cent of the cut. Even where the reduction is temporary, in the form of a rebate, there will be political pressure after the war to maintain rates at the new low level. After the war the utilities may face a sudden readjustment with a large loss of industrial revenues. They cannot immediately recoup this loss through increased residential sales, as this must await the production of new stocks of household appliances, construction of new dwellings, etc. Also, the utilities will have a burden of deferred maintenance, and probably a higher payroll due to filling out their depleted staffs by reëmployment of returning veterans.

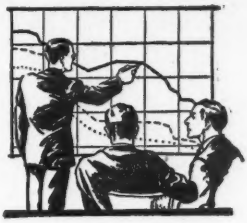
It is expected that Federal excess profits taxes will be adjusted or canceled after the war, which would keep earnings in equilibrium. But if rate cuts are substituted for taxes the utilities will suffer in the postwar period.

(4) *That companies paying excess profits taxes have above-average residential rates.* The fact is that the situation may be just the reverse and that the companies with exceptionally low rates may pay exceptionally high taxes. The companies which lowered their rates voluntarily during the 1930's had a lower average earnings base on which to figure their exemption from excess profits taxes. Thus they are directly penalized for lowering rates in advance of other companies. For example, Consumers Power—a large Michigan company—may suffer the same difficulties as Detroit Edison. Consumers reduced its residential rate from 4.4 cents in 1933—already well below the national average—to 2.77 cents in 1943. The latter figure compares with the national average of 3.60 cents, and 3.09 cents for Detroit Edison. Yet in 1943 the company had to pay 14.6 per cent of its revenues in excess profits taxes (after deducting a sizable saving due to emergency amortization of war facilities). This compared with a ratio of 12.3 per cent for Detroit Edison and only 6.8 per cent for all utilities.

(5) *That companies paying the highest taxes are among those that are less conservatively capitalized.* Here again, the answer may be just the contrary — the company most loaded with debt and preferred stock may "get away with" the smallest Federal taxes, because of the partial exemption of these types of capital as compared with common stock.

Thus, it appears that the "good" utility company which has dutifully cut its rates and reduced its debt frequently has to pay a bigger Federal tax than the company which did neither of these things — and thus in turn becomes vulnerable, under the new philosophy, to heavier rate cuts or revenue rebates.

THERE is another way in which the "good" companies suffer. In their reports to the Treasury Department, many companies have charged heavy depreciation over a period of years, and thus have written down their plant account substantially. This has been considered conservative accounting practice, and the SEC has criticized many companies for not charging off the same rate of depreciation in their reports to stockholders. But those com-



Increase in Federal Taxes

"WHILE other taxes have shown relatively little change in recent years, Federal income taxes paid by the utilities jumped from $56,000,000 in 1937 to $200,000,000 in 1943, and excess profits taxes from $6,000,000 in 1940 to $192,000,000 in 1943. The increase in these taxes has absorbed nearly half the increase in gross revenues since 1937, and since that year net income has gained only about 1 per cent although output is 64 per cent higher and revenues up nearly 40 per cent."

panies which use the invested capital option for calculating their exemption from Federal taxes are now penalized by having a low net plant account. Companies which have retained the "write-ups" so strongly condemned by the FPC and the SEC may enjoy bigger exemptions and lower taxes.

From many angles it appears that the present setup with respect to Federal taxes and rates hurts the common stockholder, and particularly the holder of stocks in the more conservative utility companies. For the state commissions to begin a policy of adding to this burden, on the supposition that these companies are making too much money, seems a travesty on the old common-law concepts of "reasonable rates" and "fair return," supposed to be the cornerstone of our regulatory system. The trouble lies partly with the Federal tax system and partly with past propaganda from Washington that most utilities are "bad" and that rates should be cut whenever possible. This leads to distorted reasoning where Washington influence prevails.

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Chairman Beardsley Ruml of the Federal Reserve Bank of New York—backed by Leon Henderson, former

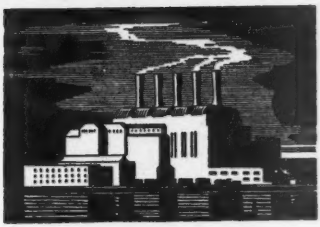
OPA chairman — advocates complete omission of corporate taxes after the war, except for a 5 per cent franchise tax and a 16 per cent undistributed profits tax. His story is that dividends are taxed twice—in corporation and individual taxes—and that it would be more logical for the individual to pay the full amount. Such a change would, of course, be extremely bullish for utility stocks. It would mean an immediate gain (based on 1943 figures) of $392,000,000, as compared with about $300,000,000 currently paid out in common dividends. Even if allowance be made for loss of electric sales to munitions factories (reducing industrial revenues by about $400,000,000, at the 1939 level), common dividends might still be increased by 40-50 per cent and the revival of the undistributed profits tax would stimulate dividend disbursements. However, the chances for such a wholesale cut in taxes seem rather remote.

It has usually been assumed, however, that at least the excess profits taxes will be reduced or canceled after the war. Utilities would save only about half this amount, or $100,000,000, since the normal 40 per cent tax rate would be substituted for the net 85⅓ per cent excess profits tax rate. If the utilities lost the $400,000,000 industrial business referred to above, their resulting net loss (less tax saving) might be $150,000,000. Utilities if relieved of excess profits taxes might thus lose $50,000,000 on balance. But they might well recoup this—and more—through increased residential and commercial sales resulting from removal of wartime restrictions, renewed sale of domestic appliances, and the anticipated residential building boom.

Some of the utilities, particularly those in Michigan, may in the meantime be hurt by the deep rate cuts or local taxes currently proposed. But if these are specifically tied in with excess profits tax payments, and if they are made in the form of refunds instead of rate cuts, they may disappear if and when Congress cancels the excess profits taxes. Recent firmness in utility stocks seems to indicate that the public is not unduly alarmed over these rate cuts, but on the contrary feels they are overshadowed by the possibility of reduced taxes in the not distant future.

"REGULATION *of our utilities, together with the destiny of hundreds of thousands of utility employees and investors, has been wrested from the states by this gargantuan central government through the machinations of the Federal Power Commission. Not only has this commission garnered unto itself the control of the utilities of the country, but it has worked with and aided numerous New Deal agencies with communistic ideologies that have been active in destroying our utility investments and setting up a system of government-owned and financed power projects, in competition with all private endeavor in this field of commerce.*"

—E. H. MOORE,
U. S. Senator from Oklahoma.



The Utilities Have a Good Story to Tell

In the opinion of the author the time to tell that story, and to tell it effectively, is now, when the public looks for sympathetic understanding on the wartime job the utilities have done, in spite of manpower and material shortages.

By E. CLEVELAND GIDDINGS

The utilities are the Caspar Milquetoasts of American business. Unless they are injected with some of the spirit of their pioneers and stand up to be heard by the public on the basis of their accomplishments and contributions to the American way of life, they are going to find themselves back in their public opinion prewar groove after the war is ended despite remarkable wartime gains in public favor.

A comprehensive, offensive, public relations program should be in progress right now. Despite hopeful signs among the policy makers, he who hesitates may well be lost if it isn't realized that seeds must be sown in sufficient quantity now and cared for with loving and interested hands during the rest of the war period if the plant is to blossom with the fragrant flowers of good will and retained business.

The day is past when a utility can sit back and not keep the public informed of its business methods and its policies. Unless, of course, it is looking forward to further regulations and controls, making it more difficult to operate at a reasonable return on investment. If the utility industry does not tell its own story—and who is better equipped—you can be sure that some demagogue now in the background will mount a platform to tell the public of the utilities. With only one side on which to base its judgment, the American public will make mistakes that are difficult to correct. Attempts have been made in the past to answer the charges filed against the utilities before the bar of American opinion. They were too little, ofttimes too late, and sometimes ethically unsound. Defensive interpretation is mostly ineffectual. It is negative at best.

The offensive—public relation-wise —should be taken *now*. Remove the wraps from the public relations experts. Clothe them with the authority and the prestige to do the job they have been hired to do. It is important enough to be done right or not to be done at all. Half measures will have less than half results. Doff the defensive armor and don the mail of the pure at heart. Relegate "What we do is our own business" to the same limbo as "To hell with the public" and substitute "What we do is the public's business."

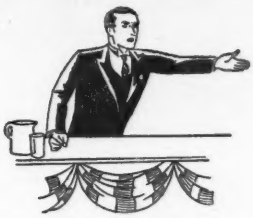
PUBLIC opinion guides the hand of the politician. He can be depended upon to reflect it. His ear is close to the ground. If the rumbles indicate it is popular to draw and quarter the utilities you can be sure it will be done. If it is popular to praise them for the job they are doing, you can be sure that will be done, too — if it is deserved. From a utility man's point of view it may not have been cricket to drag the utilities slowly over the hot coals in the prewar period but it was his own fault; he never told the public his side of the story. And you can be sure that an opportunist will take full advantage of a utility's plight to feather his own nest. Why should he worry if a utility goes bankrupt, stockholders lose their hard-earned money, and costs go up, as long as he gains his end. The public wasn't enlightened enough to refute his ideology.

The miracle of American business in outproducing all other countries during this war has reversed the trend of public opinion and headed it back again toward admiration for free enterprise. The public utilities have shared in that admiration. They have produced more power, more gas, and more transit rides with less equipment, less men than was thought possible.

THE utilities, however, have ridden into their present high state in the public's opinion partly on the coat tails of other industries that have been out in front telling the story of American enterprise. The Association of American Railroads, for example, has made rapid strides in its program of interpretation. They once again feel firm ground under their feet and are beginning to express themselves without fear of being called un-American names. They have used every available media to tell their story. The result: The bugaboo of public ownership is fast disappearing. But they are taking no chances. Their present theme looks to the postwar period and the continuation of an enlightened attitude. Kicking the railroads around is no longer popular.

THE public, at present, looks with sympathetic understanding on the wartime job of the utilities. Man-power and material shortages are appreciated because there are similar shortages affecting the public's personal needs. The rationing of commodities has made the public cognizant of the fact that the cornucopia has a bottom and they put up with shortages to further the war effort.

As long as the shortages of man power and material exist — and the public must be constantly reminded of them lest they forget—the discomforts will be tolerated. Once these things disappear the public will want bigger and better things.



Public Opinion in Politics

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LIVING costs have risen all along the line but the utilities remain the outstanding merchandisers of a commodity the price of which has not gone up the scale—a tribute to the prudence of utility management. Gas, electric, and transportation bills are now only a small part of the American workingman's budget. His earnings are greater and his utility bill is of less consequence to him. He is paying less attention to his rates and thinking more of the service rendered. As a result, the professional soap boxer sees his public slipping and is taking other means to worry that old fraidy-cat—the public utilities. The professional "workingman's friend" now resorts to the Federal agencies, whose own public relations are at a low ebb, in an effort to retain his popularity. Mr. and Mrs. John Q. Public are not giving him too much sympathy and in some instances have booted him in the pants for his patronizing intercession. It is a good old American custom when morale is high and money comes easy.

If the public utilities are to retain present good will and gain further ground, a full explanation must be made to the public of their operations. And they must admit to their shortcomings.

BALANCE sheets are always a good place to begin. A compromise can be reached with die-hard accountants and understandable man-in-the-street explanations made of financial statements. Annual reports, in most instances, have taken a turn for the better in the last few years. While it is true they are intended for stockholders, the public has a priority interest in the income and outgo of a utility so one eye should be kept on the customer. If John

Q. Public doesn't know what part of his public utility dollar is returned in taxes, how much is set aside for the wear and tear on equipment — purchased to provide more economical and better service; or what other items in the balance sheet mean, in terms of his own income, he will continue to look upon the gross as the net income. And who, then, can blame him for thinking the utilities and their stockholders are growing fat at his expense? Annual reports should also be distributed to the public and employees. The employee, particularly, should know what is taken in and what goes out in terms he can understand.

Public utilities and the public are synonymous. One is the servant of the other. While the stockholders might be owners of the property, the public buys the product and uses it. In a sense the public is a partner in the business. It must be treated as such. It must be taken behind the scenes to see what makes a utility click. When it stands outside because it hasn't been invited inside you can't take it to task for thinking a lot of hocus-pocus is going on behind closed doors. Utilities should be happy to live in a goldfish bowl. It indicates their good faith.

HAVING contributed so much to America and its progress, why shouldn't the utilities tell the world of their accomplishments instead of keeping them hidden under a bushel basket? If the public is kept in the dark, the comma boys will go to town and thus agitation for public ownership will take wing again with the geese hanging on to the tail feathers of the leader.

The utilities have a social and moral responsibility to the public. It can't be avoided. Now is the time to publicly confess that responsibility. Take the offensive and not the defensive in the dissemination of information about themselves. A fully informed public will be a friendly public. It is difficult to lure an enlightened public with the pipes of untruths because a sour note is soon discovered by a trained ear.

No media should be overlooked in taking the story of the utilities—a success story of American enterprise—into the American home. It cannot be done with newspaper advertising; it cannot be done with publicity; it cannot be done with radio; it cannot be done with speeches; it cannot be done with letters or booklets; it cannot be done with motion picture; it cannot be done over a lunch table; it cannot be done by educating the employees; but it can be done with all these and more. It must be done vigorously, expending personal effort and money, and with surprisingly less of the latter than most utility executives think.

BUT most of all it must be done frankly and with a sincere desire to tell the public the whole truth, not half-truths or occasional truths. It must be directed to all points of the compass and into every nook and cranny. It will pay off with the public having a better understanding of its utilities and an appreciation of their economical and cultural contribution to the past and present and what they plan for in the future of our country. The utilities will then be worthy of the public's support and the torch of the demagogue will be snuffed out by the overwhelming truth.

Wire and Wireless Communication

BEGINNING September 28th the FCC started hearings on postwar allocations for all kinds of radio service. Not merely broadcasting bands but the whole usable spectrum—and portions which have not yet been harnessed—will be examined or reëxamined. It is the first time in the history of FCC that such proceedings so broad in scope have been scheduled. Nearly two score different types of radio services seeking frequencies ranging from 10 kilocycles to 30,000,000 kilocycles (30,000 megacycles) had representation.

Nearly one hundred organizations, corporations, and individuals had listed or expected to list requests for appearances at hearings which were believed likely to occupy the commission throughout the entire month of October. After the hearings have been concluded, perhaps around the first part of November, the FCC was believed likely to receive recommendations from the Radio Technical Planning Board (RTPB) based on testimony put into the record. Dr. A. N. Goldsmith, chairman of Panel No. 1, on spectrum utilization of the RTPB, and Dr. C. B. Jolliffe, chairman of Panel No. 2, on frequency allocations, were expected to aid in such summarization.

HEARINGS commenced under the guidance of FCC General Counsel Charles R. Denny, Jr., and George P. Adair, chief engineer, before the entire commission membership in the Interdepartmental auditorium in Washington, D. C., Fourteenth street and Constitution avenue, N. W. A tentative program divided the various services into four major groups, with discussions being led by the chairmen of the various RTPB panels:

First, fixed government public service, coastal and marine relay, aviation, amateur, international broadcasting, mobile press; second, standard and frequency modulation broadcast, television, facsimile broadcast, and other broadcasting services, including noncommercial educational; third, police, fire, and forestry service, special emergency, provisional and motion picture services, and other special services; fourth, relay systems (both program and private communications), industrial, scientific, and medical services, new radio services (railroads, busses, taxicabs).

In view of the large number of appearances and the desire of the commission to cut its hearings in order to present its findings to the State Department by December 1st, restrictions were enforced with reference to cross-examination.

The telephone industry, including the Bell system, the United States Independent Telephone Association, and various separate independent companies, filed notice for presentation of testimony, seeking the reservation of various radio frequencies for use for present and future development of radio telephone services, including the following: rural and isolated communication services, emer-

gency services, long- and short-haul toll public service relay of radio broadcasting, television, and other services using radio frequencies, automobile, train, and other mobile radiotelephone service.

A technical subcommittee of the State Department's committee on the world telecommunications conference made early preparations for the FCC hearing. A rough draft of findings and recommendations was submitted to more than 250 members by Dr. J. H. Dellinger, chairman, who is also chief of the radio section of the Bureau of Standards.

* * * *

TELEVISION should be moved into the high frequencies of the spectrum, according to a recent declaration of James Lawrence Fly, chairman of the Federal Communications Commission, speaking at a recent luncheon in New York city. Fly suggested that television be moved into frequencies over 500 megacycles. Chairman Fly said in part:

> Television is raring to go. Yet it must seek and must develop improvements. For optimum results it would seem better to push television up into the broader band width of 500,000 kilocycles or higher. There we can experiment and find plenty of room in the broadened band width for bigger and finer pictures. Also in that setting, color television may be developed and operated successfully and add to the attractiveness of television and hence to its success.

Mr. Fly stressed the importance of chain television. Chain television, he said, must be developed. "We must have radio highways on which to convey television and FM from point to point, establishing an effective chain system of television and FM broadcasting." Mr. Fly continued:

> These are examples of major steps that must and will be taken in due course. In each of them there are important and technical difficulties that require the benefit of research carried on by competent technicians that will work in such laboratories as the Kisch Foundation plans to establish. What is needed is more research today and more tomorrow and tomorrow.
>
> In the meantime, television is going to move into commercial operation and develop a demand for radio equipment as this country has never seen before. The better the system, the greater the success of television for everyone engaged in the venture.

Alluding to FM, Mr. Fly said at the outset that FM is ready to go and has been ready to go for quite some time. "FM has brought to radio a quality which has not to this date been equaled in the field of AM," he stated.

* * * *

A NEW name for a major radio broadcasting chain is soon expected to be announced—the American Broadcasting Company, or ABC. This is in effect the present Blue Network split off from the former ownership of the National Broadcasting Company, and more recently acquired by the Edward J. Noble interests. Arrangements have already been completed whereby American Broadcasting System, Inc., Noble's holding company, has acquired the names "American Network, Inc.," and "American Broadcasting Company." This will give American radio listeners a new call letter combination for network programs, to be identified along with the three other major networks (NBC, or National Broadcasting Company; CBS, or Columbia Broadcasting System; and MBS, or Mutual Broadcasting System).

* * * *

THE committee of the House of Representatives investigating FCC recently suspended hearings following the admission into the record of testimony, upon insistence of a committee member, Representative Miller (Republican, Missouri), which had been originally taken in closed sessions of the committee. Representative Lea (Democrat, California), chairman of the special committee, indicated that he did not expect that hearings would resume until after the general elections in November. He added, however, that although no progress could be expected for the balance of this session on legislation to rewrite the Communications Act, he felt that developments along this line would be one of the first orders of business when the new Congress convenes next January. He intimated that

regardless of the composition of the next House of Representatives (whether organized by the Democrats or Republicans), he believed the House membership generally was in favor of some legislation to curb the powers of the FCC—this as a result of evidence developed by the special committee which he heads. Representative Lea is also chairman of the important House Interstate and Foreign Commerce Committee which would consider any such legislation.

The testimony made a matter of public record by Representative Miller included criticisms by a high-ranking naval officer of some administrative acts of Chairman Fly of the FCC and the Board of War Communications. They were contained in a preliminary statement made to the committee by Rear Admiral Stanford C. Hooper, naval radio expert and former director of naval operations, now retired, who was to have been the first witness at the opening of public hearings more than a year ago, but whose appearance together with that of other officers of the Army and Navy was stated to have been forbidden by President Roosevelt.

THE name of Admiral Hooper was mentioned for the first time by Mr. Fly, who identified him as the author of the statement in an angry denunciation of what he, the FCC chairman, termed the "star chamber proceedings" at which it had been made, and declared that the views expressed were not held by other officers of the armed services.

Mr. Fly further denied that alleged presidential support of any of his recommendations had led to their adoption by the Board of War Communications, or that "pressure" from the White House had been invoked or exerted in connection with any of the controversial issues to which reference was made.

Specifically, he insisted, the question of his chairmanship of the BWC had never been taken up with nor approved by President Roosevelt, nor was "pressure" from the White House brought to bear by him in support of the inclusion of labor members on board committees, nor on proposals for the examination and control of radio operators on merchant ships, in all of which matters it was asserted by Admiral Hooper that Mr. Fly's influence and acts had been inimical to national security.

In the matter of the BWC chairmanship, Admiral Hooper said the decision had been made over his opposition and without reference to him.

Labor representation on the BWC committees, the Admiral declared, had been opposed by officers of both services as dangerous because of the secrecy essential as to wave lengths, shipping, and convoys, and because of the highly technical character of the duties of the committees, none of which had anything to do with wages and hours. The labor members were voted in, however, according to Admiral Hooper, because "Mr. Fly had said the President wanted it done, and of course when that is said you usually acquiesce, in every department."

"I often question," the Admiral's statement continued, "whether the President knows about these things that they said he wanted done; but what can you do about that?"

The alleged opposition of Mr. Fly to security measures advocated by Admiral Hooper and other naval officers, his noncoöperative attitude on matters involving examination and control of radio operators on merchant ships, and his long delay in turning over fingerprints of radio personnel in response to repeated requests from the Federal Bureau of Investigation, were attributed directly by Admiral Hooper to the desire of the FCC chairman and the President to enlist the support of the American Communications Association, a CIO affiliate whose 1942 convention in Atlanta was addressed by Mr. Fly.

LEGISLATION giving the Navy control of radio operators on merchant vessels had been opposed "in the beginning" by Mr. Fly and "pressure brought to bear" for the abolition of the board, which, under a law providing for the disqualification of such operators, was headed by an Admiral of the Navy and in-

cluded also representatives of the Coast Guard and the Maritime Commission, Admiral Hooper's statement further declared.

In response to a committee question on how pressure was brought to bear to abolish the board, the Admiral said:

> I never did know. The first we heard of it was when the officers told me they were going to be told not to disqualify any more Communists. That was after Russia got into the war.
>
> We got rid of the Japs and the Fascists and the Germans, and had started on the Communists when the pressure came to stop the elimination of Communists. The pressure was said to have come from the White House.

Mr. Fly insisted that no cases of disloyalty on the part of radio operators ever had been reported to him.

Mr. Fly was heard briefly in further explanation of his part in the matter of the grant of increased power to station WFTL in Florida and the sale of the station by Ralph A. Horton to George B. Storer, president of the Fort Industry Company.

Limitation of the numbers of commercial broadcasting stations that can be in a "single ownership" was hinted by Chairman Fly at the hearing before the special committee on September 12th. Disclosure that such limitation has been the subject of "informal discussion" by the commission was made at the session, at the close of which Representative Lea issued a statement saying that legislative restriction of the wide powers now vested in the FCC would be "a first order of business for the next Congress, regardless of which party controls the House."

The possibility of FCC action in the meantime to place further restrictions on station ownership came during the day's hearing on the transfer of station WFTL from Mr. Horton to Mr. Storer.

* * * *

A. N. Williams, president of the Western Union Telegraph Company, last month announced that the company had deferred its proposed $25,000,000 refunding program because of the question of jurisdiction raised recently by the New York Public Service Commission over the issuance of Western Union securities. He explained that the company had expected to issue on October 2nd a call for the outstanding $25,000,000 of 5 per cent bonds due in 1951, and added: "In view of the fact that the commission has raised the question of its jurisdiction and the proximity of October 2nd, the company has decided to defer for the present consideration of the refunding issue."

In an opinion approved September 19th by the state commission, Milo R. Maltbie, chairman, held that Western Union's refunding program was not outside the commission's jurisdiction. At a hearing on September 14th the company had maintained that the funds from the outstanding securities were used outside the state, and that, since the new issue was to be used to refund these obligations, commission approval was unnecessary. Mr. Maltbie said the company had failed to prove that all of the proceeds from the outstanding bonds had been spent for purposes outside the state. He also characterized as "most unusual" the company's proposal to ask for bids within five days of September 25th, the date for opening of bids. The time allowed was too short for a thorough examination of the proposal, he said.

* * * *

Establishment of a trust fund by the American Telephone and Telegraph Company to finance five annual postdoctorate fellowships of physical science was announced last month by Walter S. Gifford, president.

The awards, to be known as the Frank B. Jewett Fellowships, will be made in honor of Dr. Frank B. Jewett, president of the National Academy of Sciences and vice president of AT&T in charge of development and research, who was to retire from the company at the end of September. The fellowships provide an annual honorarium of $3,000 to the holder and $1,500 to the institution at which the recipient elects to do research.

Financial News and Comment

By OWEN ELY

National Power & Light Company

(Series of holding company reviews.)

NATIONAL POWER & LIGHT COMPANY has made greater progress toward dissolution under the requirements of the Holding Company Act than any of the other subholding companies of the Electric Bond and Share system. The last of the parent company's bonded debt was retired in 1942, and the preferred stock was canceled during 1942-43, leaving only 5,456,117 shares of common stock. A number of subsidiaries have been disposed of, including Memphis Power & Light, Tennessee Public Service, and the electric properties of West Tennessee Power & Light Company.

The stock of Houston Lighting & Power Company was partially exchanged for National preferred, and the balance was sold in 1943.

The company now has three large subsidiaries — Pennsylvania Power & Light, Birmingham Electric, and Carolina Power & Light; and three smaller ones—Lehigh Valley Transit, Memphis Generating, and Edison Illuminating Company of Easton. It is planned to sell (or distribute to stockholders) the holdings in all these companies. However, the SEC has required various adjustments, transfers and cancellation of securities, and accounting changes to "streamline" the operating companies prior to their disposal. These requirements are described in detail on pages 1-3 of National's report for 1943.

THE program with respect to Carolina and Birmingham has been completed and is also detailed in National's report. In 1941 the SEC agreed to National's request that the discussion of inflationary items in the Pennsylvania plant account be delayed pending the consummation of plans with respect to other subsidiaries, and accordingly the question has remained dormant so far as that commission is concerned.

However, the FPC has held that the plant account was overstated $66,526,894 as of January 1, 1937. Of this total, $15,668,403 was in Account 100.5 and could presumably be amortized, while $50,858,491 was in Account 107. Of this latter amount, the company stated that $13,276,645 had already been charged off, reducing the amount to about $35,000,000.

The present ratio of all debt to net plant account is 64 per cent, but a write-off of $35,000,000 would raise the ratio to 78 per cent, and the mortgage debt ratio to 58 per cent.

NATIONAL has been hopeful that the Pennsylvania plant readjustment can be worked out gradually over a period of years without the necessity for a substantial cash contribution by the parent company.

In an amendment to its dissolution plan, filed with the SEC February 15, 1943, National stated that "since the 1939 financial program became effective Pennsylvania's senior securities have been reduced about $3,800,000 and its gross plant account has been increased $18,000,000, this resulting in increasing the excess of plant account over debt and preferred stock by $21,800,000; that in the next 5-year period it is estimated that the plant account will increase over

$15,000,000, and that $15,000,000 senior securities now outstanding will be retired, thus increasing, without new financing, the excess of plant account over debt and preferred stock by $51,800,000 in the 8½-year period, and reducing the percentage of Pennsylvania's mortgage debt to gross plant account at the end of 1947 to 38 per cent, a figure well below the mortgage debt ratio recommended by regulatory authorities."

Whether this plan for gradual improvement in the Pennsylvania setup proved acceptable to the SEC has not been indicated, but the matter of plant account adjustment is primarily the concern of the Federal Power Commission and the state commission. The dividend restriction limiting payments on the common stock to 25 per cent of available net earnings has remained in effect.

NATIONAL POWER & LIGHT is currently selling at 6¼, this year's range being 7⅛-5¾. Earnings per share in the twelve months ended July 31st were 71 cents on a consolidated basis. The stock is therefore selling at about 8.8 times current earnings. Considering the caliber of the operating companies, higher average price-earnings ratios for the individual operating companies' stocks (when sold or distributed) would seem warranted. However, if it should prove necessary for National to make a substantial cash contribution to Pennsylvania for debt retirement this might substantially modify the final results. There might also be changes in Federal taxes as a result of breaking up the system.

The recent Birmingham Electric refunding program improves the picture.

Construction Expenditures, 1927-44

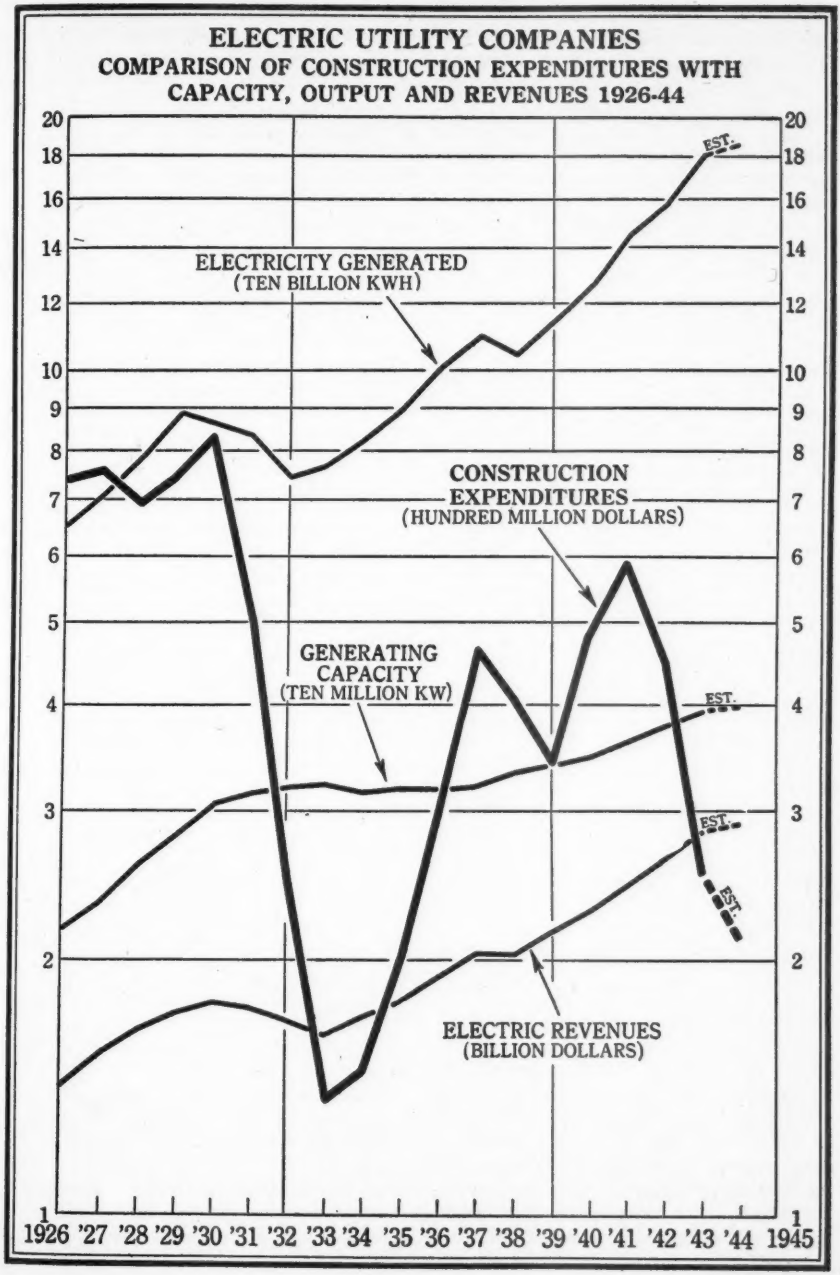
DURING the five years, 1927-1931, the electric utility companies spent an average of some $700,000,000 a year on new construction, and increased their generating capacity by about 10,000,000 kilowatts. It will be recalled that construction work was maintained at a high level in 1930-31 at the request of President Herbert Hoover, to combat the depression.

During the ensuing five years, 1932-36, annual construction costs dropped to the $200,000,000 level, which apparently just about sufficed to offset retirements, since capacity remained at about the same level during this period. In the next four years (1937-40) construction averaged some $430,000,000, which boosted capacity by about 2,600,000 kilowatts.

DURING the wartime period, annual expenditures have dropped from a high of $592,000,000 in 1941 to an estimated $210,000,000 for the current year, or a 4-year average of about $380,000,000, yet capacity has been raised 5,400,000 kilowatts. It is, of course, difficult to draw conclusions because of the fact that some expenditures for a given year may not be reflected in installed capacity until a later year. Nevertheless, it appears that the utilities have received good value for their outlays in recent years, despite rising costs. Allowing for increasing retirements in the later period, the utilities seem to have obtained a substantially larger number of kilowatts' capacity per dollar of construction cost in recent years than in the 1920's and early 1930's.

But the increase in generating capacity does not tell the whole story. The companies have been making increasing use of capacity. In 1926 they used only about 34 per cent of maximum generating capacity (8,720 kilowatt hours per annum for each kilowatt) but in 1936 this increased to 37 per cent; in 1940, to 42 per cent; and in 1944, to 53 per cent. The current ratio is, of course, somewhat abnormal as many generators are being worked far above their nameplate ratings, and the spreading of much of the industrial load over the entire 24-hour period has also permitted a greater average output.

IN the chart on page 499 construction expenditures are compared on a percentage (logarythmic) basis with gen-


ELECTRIC UTILITY COMPANIES
COMPARISON OF CONSTRUCTION EXPENDITURES WITH CAPACITY, OUTPUT AND REVENUES 1926-44
ELECTRICITY GENERATED (TEN BILLION KWH)
CONSTRUCTION EXPENDITURES (HUNDRED MILLION DOLLARS)
GENERATING CAPACITY (TEN MILLION KW)
ELECTRIC REVENUES (BILLION DOLLARS)
EST.
20
18
16
14
12
10
9
8
7
6
5
4
3
2
1
1926 '27 '28 '29 '30 '31 '32 '33 '34 '35 '36 '37 '38 '39 '40 '41 '42 '43 '44 1945

erating capacity, electricity generated, and electric revenues. While the comparison of annual expenditures with aggregate cumulative amounts is not very accurate, it seems impracticable to employ figures for total plant value since these have been so largely affected by accounting write-offs in recent years. If at some later date some agency compiles data on the aggregate amount of write-offs for all companies, it will then be possible to adjust plant value for past years and use the figures in place of the annual construction expenditures.

Prospectuses Should Be Summarized

THE average prospectus is a formidable document of some 50 to 100 large pages. Under the new national standards of investment banking imposed by Washington, it has become the sole legal selling document. Other selling aids, such as "comparison sheets," summary stories, engineers' reports, etc., are (in theory at least) permitted to be used only as "office information" by the syndicate and sales staffs of the banking houses interested in the issue.

Prior to 1933, advertisements of security offerings in the press almost invariably furnished a summary description of the company and the security offered. During the past decade this has been discontinued and advertisements today are confined to drab announcements of new issues, the offering price, and the make-up of the syndicate.

The large institutional investor is usually well equipped with a statistical staff, the members of which can leaf through the prospectuses and indentures and prepare digests or buying memoranda for officials. Some of the smaller institutions may rely on summaries and special advices prepared by experts such as Duff & Phelps (Chicago) or W. C. Gilman & Co. (New York). But private buyers are still handicapped in examining new issues because of the huge undigested mass of information embodied in the prospectus.

Some prospectuses contain a summary of earnings near the front of the document, so that the reader does not have to search laboriously for the figures among the voluminous financial statements at the back of the documents; but it is only occasionally the practice to include *pro forma* statements and to indicate the earnings coverage for bond interest or preferred dividends, etc.

In a recent prospectus for Gulf States Utilities Company preferred stock (prepared by Engineers Public Service), a definition of terms and a brief description of the preferred stock appeared on page 2, and page 3 contained a summary of the prospectus, which we reproduce (on pages 501, 502) to indicate the method used. In our opinion the SEC might well require the inclusion of such a summary in all prospectuses, and the banking group which offers the security should be permitted to publish the summary in their offering advertisement.

It is understood that the legal fraternity has been reluctant to permit use of the summary in prospectuses because of the fear that it might omit "essential facts." If a published expression of opinion and policy by the SEC should prove inadequate to encourage (and in fact require) the inclusion of such a summary and its use in press advertisements, it would be desirable to amend the Securities and Exchange Act in order definitely to legalize such procedure.

THE reduction of common stock issues to a mere trickle in the past decade may have been due in part to the present cumbersome method of selling new issues. It is difficult, if not impossible, to furnish buyers (legally) with a simple abbreviated story. While high-grade common stocks may find a partial market with fire insurance companies, investment trusts, etc., individual buyers take a much larger proportion than is the case with bond and preferred stock issues.

Many holding companies over the next year or so may have to offer the stocks of their operating companies in the public market. Also, there seems to

be general agreement regarding the necessity for stimulating common stock financing of all kinds after the war. Permission to use summarized descriptions, both in the prospectus and in advertising, should greatly facilitate the sale of common stock issues among individual buyers.

SUMMARY

The following is merely a brief outline of certain information contained in this Prospectus and is subject to the more detailed statement herein and in the Registration Statement. The entire Prospectus should be read prior to any exchange or purchase of New Preferred offered hereby.

THE COMPANY Gulf States Utilities Company was incorporated under the laws of Texas in 1925. The company generates and purchases, distributes, and sells electric energy at retail and at wholesale in an area in southeastern Texas and south central Louisiana comprising approximately 27,500 square miles. In this area the company sells electric energy at retail in 258 communities and surrounding territories with an estimated aggregate population of 549,000, including the cities of Beaumont, Port Arthur, and Orange, Texas, and Baton Rouge and Lake Charles, Louisiana. The company also supplies steam to two large industrial customers. All of the company's electric system is interconnected with the exception of small properties at Alvin and Jasper, Texas. Interconnections are maintained for the exchange of power with certain other utilities and industries. (See map under "Property.") Natural gas is purchased and distributed in Baton Rouge and vicinity to an estimated population of 92,000. The company supplies water in seven communities with an estimated combined population of 109,000, and manufactures and distributes ice in five communities having an estimated combined population of 77,000.

A major economic factor in the territory served is the production, transportation, and refining of oil, over 19 per cent of the company's revenue being derived directly from service to the oil industry for oil field and pipe-line pumping and refining. For more detailed information, see "Service Area and Business." The average annual use of electrical energy per residential customer for the twelve months ending June 30, 1944, was 1,164 kilowatt hours; the average price was 3.74 cents per kilowatt hour; and the average annual bill was $43.49.

EFFECT OF WAR The business and operations of the company have been materially affected by activities resulting from the war. It cannot be known whether the continuance of the war will result in further increases in the company's business which is now at levels not heretofore reached, except that the full effect of a year's operation of new industrial plants and pipe-line pumping stations, recently completed, will further increase operating revenues and expenses.

The effect upon the business of the cessation of hostilities cannot be determined, but it is anticipated that it will result in material reduction of certain revenues. During recent years there has been a trend toward higher costs applicable to the business of the company including higher taxes, labor costs, and prices of materials and supplies. There has also been an increase in governmental regulation. The company does not undertake to forecast the future effect on earnings and operating expenses of these political and economic factors.

PURPOSE OF ISSUE The new preferred is being offered in exchange for the old preferred in accordance with the exchange offer herewith and the net proceeds from the sale of any new preferred not exchanged and from sale of 20,006 additional shares will be used: (1) to provide cash required for the exchange offer or to call old preferred not exchanged, (2) the retirement of the then $1,000,000 outstanding bank loan, and (3) for other corporate purposes.

CAPITALIZATION The outstanding capitalization of the company (see "Capitalization," page 7) upon completion of this financing will be as follows:

(*Continued on next page*)

First mortgage and refunding bonds, series D 3¼% due 5/1/69	$27,300,000
Preferred stock, $—— dividend cumulative, $100 par (this issue)	$12,000,000
Common stock (no par value)	280,000 shs.

The above statement is subject to all the notes under "Capitalization."

PROPERTY The company owns five steam power plants of 204,620 kilowatts' total rated generator capacity and five internal combustion plants of 1,088 kilowatts' total rated generator capacity. The system included at June 30, 1944, 5,256 miles of pole line, and 327 substations and switching stations having a total rated transformer capacity of 532,087 kilovolt amperes. Property, plant, and equipment (including intangibles) as taken from the balance sheet as at June 30, 1944, amount to $63,124,893. (See "Financial Statement.") Statistics and operating data for the past five years are shown on pages 14 and 15.

EARNINGS The figures shown below are taken from the financial statements and show: (1) total operating revenues; (2) balance applicable to interest requirements (after depreciation and all taxes including Federal); and (3) balance for dividends and surplus.

	(1)	*(2)*	*(3)*
12 months ended June 30, 1944, *Pro Forma*	$16,540,092	$3,698,079	$2,763,700
12 months ended June 30, 1944, Actual	16,540,092	3,668,223	2,457,934
1943	15,398,189	3,508,512	2,283,327
1942	12,571,804	3,002,431	1,772,195
1941	11,836,157	3,265,429	2,020,903

The above figures are subject to all the notes and references contained in the financial statements. The annual dividend requirements on the new preferred are $..... On a *pro forma* basis, the preferred dividends are earned ..... times and total charges are earned ..... times.

FRANCHISES In the opinion of counsel the company holds franchises, containing no unduly burdensome provisions, which give it the nonexclusive right to carry on its electric, gas, and water businesses in the localities in which its operations are now being conducted. (See "Franchises.")

COMPETITION The electric business is substantially free from direct competition with other public utilities or municipalities except in four communities with a combined population of 10,423 (1940 census). For discussion of rural electric coöperatives, the Rockland dam project, and power developments built by others than the company at Lake Charles, Louisiana, see page 11.

LABOR RELATIONS The company has recognized an independent organization of employees as the bargaining agent for employees since 1941. The company participates with employees in the cost of group life insurance plans and in providing certain sickness and accident benefits. It had 1,288 employees on June 30, 1944.

REGULATION In certain respects the company is subject to governmental regulation in the states of Texas and Louisiana, as well as to the jurisdiction of the Federal Power Commission under the Federal Power Act. The regulatory powers under this act are broad, particularly as to accounting. (See page 22.) Because the company is a subsidiary of Engineers, a registered holding company, it is subject to the jurisdiction of SEC under the Public Utility Holding Company Act of 1935. The regulatory powers under this act are also broad. Section 11 of the act imposes on that commission the duty, among others, to require each registered holding company to take such action as SEC finds necessary to limit the operations of its system to a single integrated system, certain additional systems, and certain other businesses. In September, 1942, the commission ordered Engineers to dispose of its interests in the company and this order was challenged in the United States Court of Appeals in the District of Columbia which set the order aside.

The decision of this court has been appealed by SEC and Engineers to the Supreme Court and certiorari granted but no date for the argument has been set. (See page 23.)

What Others Think

The Fallacy of Retroactive Depreciation

DEPRECIATION accounting of itself is hardly an exciting subject. But it continues to be probably the most talked of matter in the field of public utility regulation at the present time. The reason, of course, is the likelihood that the committee on depreciation of the National Association of Railroad and Utilities Commissioners will file another outstanding and provocative report on this subject at the forthcoming convention of the NARUC in Omaha next November.

One of a number of able papers dealing with the suggestions on depreciation accounting already made in discussions of the NARUC committee was contained in the May issue of *The Controller* magazine, published by the Controllers Institute of America. (In fairness it should be noted that the NARUC committee has not specifically recommended retroactive depreciation.) It was an article by Donald Gunn, well-known civil engineer, who is at present chief engineer of the Pennsylvania Water & Power Company of Baltimore. Mr. Gunn is, of course, well aware of recent court decisions which have had the effect of suspending, if not eliminating, the force and effect of earlier decisions which laid down the rule that public utility rates ought to yield a return on present fair value of property rather than investment cost thereof. He is also conversant with the numerous and sometimes militant articles and opinions of economists and other authorities which have brought about a certain degree of acceptance for the cost theory, as distinguished from the value theory.

NOTWITHSTANDING this measure of sophistication, Gunn stoutly holds to the idea that the value theory is not only essentially logical but that the proponents of the cost theory have been to some extent inconsistent. This fundamental trouble, he thinks, naturally bedevils the allied subject of depreciation. Speaking of value, he states in part:

> As a first step, it was urged that the fair value basis of rate making was too slow, too complicated, too expensive, and too every-other-undesirable quality that could be imagined. This attack was so violent that it actually reflected upon the sincerity of the courts for ever having laid down such a basis for rate regulation. All of this, in spite of the obvious logic and soundness of that basis. It was urged that in place of fair value, *original cost* should become the basis of utility rate regulation. This original cost basis, it was asserted, would be simple, inexpensive, just, equitable, stable, beautiful, and all such things.

Gunn goes so far as to detect a note of insincerity in the chorus of praise which those economists and reformers who, generally speaking, do not have much money of their own tied up in utility investments are constantly singing in favor of the original cost theory. He suggests that the proponents of this theory, or some of them at least, might not be so much interested in "equitable" regulation as in precipitating actual liquidation of private enterprise in the public utility industry.

In plain words, he suggests that regulation—to the disciples of this school of thought—is merely a device, not for protecting both the public and the investor by fairly balancing the returns and benefits of public utility enterprise by private capital, but, on the contrary, for hastening what they regard as an inevitable and desirable advent of public ownership in the public utility business.

HE concedes that the original cost theory has received wide favor, that it has an appealing sound. But he points to the progressive steps which

have been taken against the interest of private investment in the public utility field under the auspices of the original cost theory: First, return was to be based, not on the value of the property, but on the cost—a debatable but plausible proposition. Next they developed the "aboriginal cost" theory by which return was to be based, not on the cost to the present owner, but to the first owner who had ever devoted the property to public service. Next, if such "aboriginal cost" were not known, as was quite likely to be the case, it would be estimated by processes calculated to resolve any doubts against the owner.

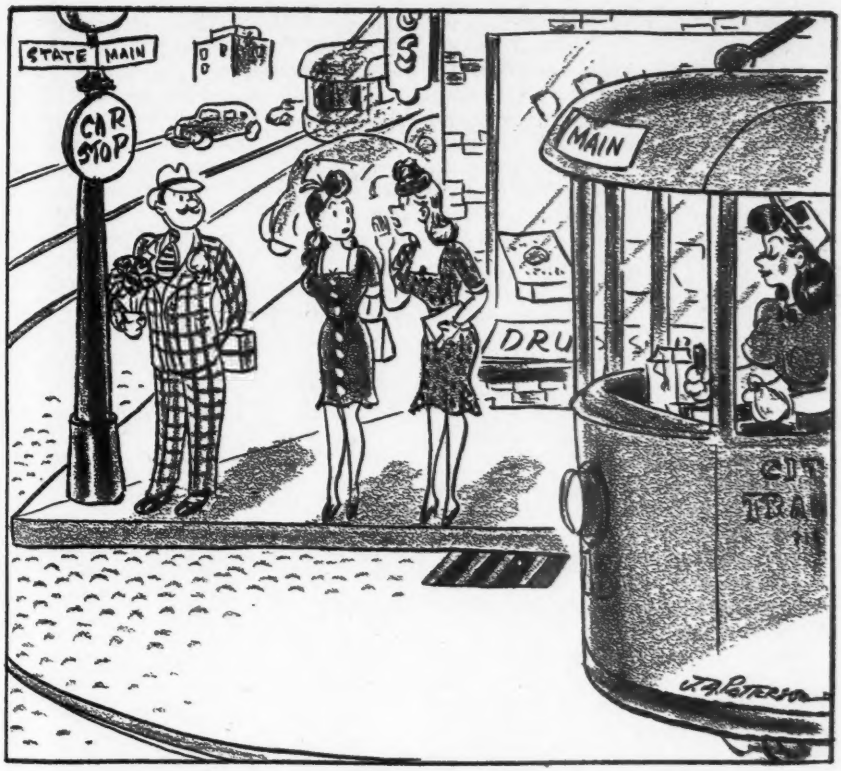
Finally, with the flexible base of original cost thus prescribed, we now have a theory of retroactive depreciation which would further destroy the integrity of what original cost investment the property owner might finally succeed in establishing in the face of such adverse currents. Mr. Gunn states:

> The present theories of those who favor public ownership are that earnings be based solely on their theory of original cost reduced by their theory of however much depreciation reserve would exist if their theory of depreciation accounting had been followed from the beginning. Their theory of depreciation contemplates a retroactive straight-line calculation based, in final analysis, upon their present assumption as to the future life of physical property now existing. This theory of depreciation has been designated by its proponents with the resounding and stilted title of "reserve requirement" to impute substance where none, in fact, exists. As we all know, the latitude of assumptions as to the future life of most physical property is practically boundless. Therefore, the rate at which a utility's basis of earnings will disappear under this theory is merely a matter of what is prescribed as the assumed future life of the physical property.
>
> It would seem obvious, upon the most superficial thought, that utilities cannot survive on this basis in an economic structure composed largely of unregulated enterprises with which they must compete for capital and personnel. These public services must continue in the future. They will continue in one of two ways, if this theory of regulation prevails. The utilities will either pass into the hands of the government, or the other unregulated enterprises, which make up our economic structure, will ultimately be forced to conform to the basis of earnings prescribed for public utilities. The utilities have fought what might be termed a rear-guard defense against these theories for more than ten years. They have examined with particular care the theory of straight-line depreciation as a device for regulating earnings. Much has been learned.
>
> The advocates of this straight-line theory first undertook to argue that depreciation actually proceeded uniformly with respect to time. They finally discovered that probably as much as 80 per cent of the retirements of public utility property in the past had resulted from so-called functional causes outside of wear and tear. A large part of this 80 per cent was actually attributable to obsolescence. Since nonphysical depreciation obviously does not progress uniformly with respect to time, that line of argument has been largely discarded. The argument itself became afflicted with obsolescence.

BUT a new argument has appeared, says Gunn, to the effect that depreciation reserves of public utilities really represent reimbursement by ratepayers to the present owners for property used up in rendering service. These reserves may be temporarily invested in property additions or securities but not paid out in dividends. In any event, the full rate of return on this portion of the utility's property should be credited to the ratepayer's bill. In other words, original cost as a rate base should be reduced by the amount of the reserve for depreciation.

The more extreme advocates of the straight-line depreciation theory do not concern themselves whether such a reserve has ever actually been created from past earnings. They urge, not that earnings be reduced by the amount of actual reserve, but what would have been in the reserve if their theories of a "reasonable life table" had been followed from the beginning.

He says that the "straight-line theory of depreciation imputes to life estimates a degree of reliability that no estimate involving the future can ever possess." This undue emphasis on life tables and the tendency to treat such estimates as facts prompts Gunn to give his own estimate of their essential character. He believes the boundaries to the field of assumptions as to future life of the property (respecting such factors as obsolescence) are limitless, and it is this very latitude which is dangerous. Being un-



"BELIEVE IT OR NOT, HE'S WAITING FOR A STREET CAR"

restrained by any substantial relationship to fact, untrammeled assumptions can be made to serve any end, provided only that one has the power to impose them. Since the virtual abdication of judicial review by the Supreme Court in the Hope Natural Gas Case, there is small reason to believe that utility regulatory authorities do not possess such powers.

Gunn challenges the validity of such statistics as have been mustered by proponents of public ownership to support their case, and says the use of them would entail further violent assumptions leading to untenable conclusions. There is, for example, the frequent assertion that statistics on equipment can be relied upon the same as statistics on human life. Gunn says the basic fallacy to the proposition is the obvious fact that human beings remain substantially the same from generation to generation, whereas in a developing industry one generation of equipment bears little if any similarity to a succeeding generation. Here again the result leads to the desired end—public ownership.

HAVING related a self-serving assumption to a synthetic fact, public ownership advocates propound then this thesis. First it is asserted, as an article of faith, that present actual depreciation cannot be objectively measured. Then it is declared that the remaining life of the property can be measured on the basis of a theoretical assumption. It follows from this that the depreciation reserve should

be conformed to the calculated "reserve requirement."

This brings us to the argument for retroactive depreciation as a rate-making technique. Mr. Gunn says that an honest belief in this concept can only rest upon "an honest belief that one can guess the impact of future events with greater accuracy and more reliability than one can appraise the effect of past events"—such past events being in the form of physical facts. The author reduces this assumption to an absurdity by the following analogy:

> If one were a doctor and decided to employ an age-life advocate's reasoning, his practice would be simple and easy. He would simply guess at his patient's future life and, from that, determine the acuteness of his ailment. If he had been a good-paying patient in the past, the doctor might refer to a mortality table, the more accurately to establish the degree of the patient's sickness. There are doubtless many other situations in the course of human events where equally logical assumptions would simplify problems and eliminate burdensome mental processes. What might be the results can only be guessed.

What arguments have been made against retroactive depreciation? Mr. Gunn finds they are principally based on equity, which is in the nature of a dubious plea for mercy. It inevitably collides with the argument about using alleged excess past profits as a basis for future inadequate earnings. The critic must then abandon his plea of equity and take refuge in the statute of limitations, or "over-the-dam" theory, which may lead to the unhappy result witnessed by the proponents of this theory in the Hope Natural Gas decision.

No, Mr. Gunn says, equity is not a valid basis for arguing against retroactive depreciation. He suggests that the logical approach is to go back and rectify the fundamental fallacy upon which retroactive depreciation has been erected. To do this one must start with the simple and clear assumption that *results of the past can be evaluated with greater accuracy and reliability than one can guess the future*, especially the distant future. It follows from this that the proper depreciation reserve for any time must be related to estimates of past effects of causes of depreciation.

These estimates must be used to guide the course of the reserve balance, however annual depreciation must be determined. This, in fact, is all that *can* be done, whether or not anyone cares to admit it. Allowance must be made, of course, for adjustments. This makes the specific accuracy of the annual allowance of less importance, although both the original allowance and subsequent adjustments must be tied in as closely as possible to a fair assessment of the actual requirements, based on all available facts and circumstances.

Granted it may be necessary for an annual appropriation to be stated as an age-life ratio. It must be kept in mind, however, that such statements are pure arithmetic for accounting convenience—something like the recent War Production Board time-tables based on D-Day, V-E Day, and X-Day. It is too bad, says Mr. Gunn, that guesses are the best we can do for the future. But it is far worse, if not actually dishonest, if we try to put a false label on our guess and call it a fact. Mr. Gunn concludes:

> The scientific processes, by which the contemplated measurements of depreciation would be made, involve precisely those same procedures which guide the decisions to create, maintain, and destroy property. If these processes are sound as a basis for those purposes, they certainly should be adequate for measuring the progress of depreciation during the usefulness of such property. After all, decisions to create and destroy property are irrevocable, while any treatment of depreciation can be subject to periodic adjustment and correction. To call the process inaccurate, to say it involves judgment—or anything else that may be said of it in the future—in no wise impairs the soundness and logic of the suggested procedure. All of these statements—and more—can be made with greater reason, against estimates of remaining life. It is my belief that the courts have always had this fact in mind during the many years when they have repeatedly relied on determinations of actual depreciation.

The author closes with the statement that the problem is of more than public utility concern. Depreciation, par-

ticularly that resulting from obsolescence, will become an increasingly important factor in readjustment after the war.

This will be a major problem and a vital taxpayers' stake in the government's handling of the vast investment it has made in war industries.

Dr. Bauer Explains His Prudent Investment Rate Base Theory

THE September 14th number of PUBLIC UTILITIES FORTNIGHTLY contained a review of my article in the June number of the *Yale Law Journal* on the establishment and administration of a prudent investment rate base. The writer's statement was in general accurate and fair, but on three points it seemed to invite and warrant a reply.

My article had to do with the procedure necessary to establish the prudent investment rate base and maintain it through accounting processes for exact future administration of public utility rate regulation. For many years my chief drive has been to transform floundering rate control into an administrable system. Its nonadministrability has been due primarily to the fair value-reproduction cost rate base requirements under long-standing Supreme Court decisions. This obstacle now has been happily removed and a definite accounting rate base is now available through appropriate state action.

The purpose of my article was to outline the steps that are essential to the establishment and maintenance of an exact rate base. In general my proposal was in line with the Federal Power Commission's findings and orders which were upheld by the Supreme Court in the Natural Gas Pipeline Company Case and the Hope Natural Gas Company Case. In my presentation I distinguished between the *initial adjustments* and the *subsequent accounting* in the continuous maintenance of the rate base. The initial determinations require establishment of (a) the original cost of the properties used in service and (b) their depreciation; and the accounts would be revised accordingly.

APART from working capital, the initial rate base would consist of the original cost less the depreciation as ascertained, and as presented duly in the revised accounts. Subsequently the plant additions and retirements, and the further accruing depreciation, would be entered according to regular accounting standards, and at any time the prudent investment would consist of the original cost of the properties as shown by the accounts, less the depreciation reserve. With such a definite rate base, the commission could decide promptly in any instance whether rates should be reduced or increased, with equal protection of public and private rights. Regulation could be systematically administered, without the protracted hearings, the conflicts of interest, and the extensive nonfeasance that have characterized past regulation.

The PUF review of my article presented clearly this general perspective, but it seemed to present three lines of incidental misconception. First, it suggests that in the treatment of depreciation my proposal does not provide exact mathematical determinations and so presumably would not establish the definiteness it proposes. In considering the implied criticism, the distinction between *initial* determinations and the *subsequent* accounting must be kept in mind. In regard to the initial depreciation adjustments, it is inevitably true that no exact mathematical basis can be fixed. Special investigation and determinations must be made, and the factor of judgment is unavoidable. However, I propose that all the uncertain and disputable elements be resolved once and for all, in all potential fairness to consumers and

investors. They may be subject to compromise, but they should be converted to exact figures in the initial determinations. They should not be left loose and undetermined to bedevil the later rate-making procedure.

For the initial ascertainment of depreciation I pointed out the general factors that should be taken into account, but the findings would not be definitely mathematical; they would be designed to be reasonable. However, after the initial findings and the corresponding adjustments in the depreciation reserve, all subsequent entries would be mathematical. While the annual depreciation provisions would depend upon informed managerial and regulatory judgments, the amounts would be definite and they would be entered in the accounts as conclusive in the showing of the relative consumer and investor rights.

THE second point concerns the treatment of excessive depreciation reserves in the initial adjustments. In general my view agrees with that of the Federal Power Commission, to establish the so-called *required* reserve to cover all existing depreciation, physical and functional. In the great majority of instances this concept can be readily and reasonably applied, and mostly the existing reserves are less than the required. There are, however, some companies, especially in the natural gas industry, where the existing reserves accumulated through past depreciation charges to operating expenses exceed the required reserve. In such instances the Federal Power Commission held to the required reserve. On the whole I believe that this FPC position is all right, but there might be reason to deduct the actual reserve if this had been accumulated under recognized past accounting and financial policies, especially if the past charges had received regulatory approval in the fixing of reasonable rates.

Contrariwise, there may be instances of inadequate existing reserves where the required reserves could not be reasonably taken into the initial adjustment. This would be true if past inadequate depreciation charges had been taken by the commission in the fixing of rates, and if the company was not allowed sufficient provisions for an adequate reserve. However, such situations of excessive or inadequate reserves constitute at most an incidental and relatively unimportant factor in the initial establishment of the prudent investment rate base. As a matter of fact, I did not take a positive position on them, but they should be resolved definitely in the initial findings on the basis of all-around reasonableness. They should not be left as left overs to cause later dispute and interference with rate administration.

A THIRD point pertains especially to existing plant items which had been charged to past operating expenses. In the Hope Case there were past well-drilling costs aggregating $17,000,000 which had been charged to operating expenses, and were disregarded by FPC in the rate base findings. This treatment does involve a question of reasonableness, but under the particular circumstances I am disposed to agree with it. If actual plant costs have been charged in the past to operating expenses as regular accounting matters, especially if the results have been recognized in past regulatory procedure, I can see no justification to lift the amounts and include them in the establishment of prudent investment. Again, however, this is a secondary and incidental matter, and no great public harm would be done if the amounts were included outright in the original cost determinations. What is important is that exact factual determinations be made, with exact disposition of all disputed items.

In conclusion, having regard for excessive existing reserves and for plant items charged to operating expenses, the review asks in way of *"reductio ad absurdum,"* what should be done in instances where the cumulative past consumer contributions to the plant would be 100 per cent of the total plant investment or where they might exceed the net plant investment? In reply, I should say that the writer was under misapprehen-

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SAID THE FOX TO THE GOOSE

sion of the accounting and financial categories that are involved. If there has been actual investment by a company's security holders, and if it has been directly or indirectly maintained, there can be no such results as assumed. What is involved may be best presented by definite accounting setups.

Assume a utility corporation with total plant costs of $150,000,000 as shown by its accounts. Ignore all other assets and current liability items, and assume total capitalization, bonds and stock, $50,000,000, depreciation reserve $50,000,000, and earned surplus $50,000,000. Assume further that this showing represents proper past accounting and that no initial adjustments are re-

quired. Under this situation the prudent investment rate base would be $100,000,000, derived either by deducting the depreciation reserve of $50,000,000 from the plant costs of $150,000,000, or by taking the capitalization of $50,000,000 and adding the surplus of $50,000,000.

Next, assume the same as to the plant accounts, $150,000,000, also the same capitalization, $50,000,000, but a reserve of only $25,000,000 instead of the required $50,000,000, and with a consequent showing of $75,000,000 for surplus. Assume also that the reserve was not predicated upon past commission restrictions and that an adequate reserve could have been provided under the regulatory allowances. In this situation the reserve would be adjusted to $50,000,000 in the initial findings, and again the prudent investment rate base would be $100,000,000.

Third, assume again the same plant account, $150,000,000, the same capitalization, $50,000,000, but an excessive reserve of $75,000,000 and a consequent surplus of only $25,000,000. Assume again that the required reserve is $50,000,000. Now the question arises whether the actual reserve or the required reserve should be deducted from the $150,000,000 plant costs to establish the initial prudent investment rate base. The reasonable answer would depend upon the facts in regard to the past accumulation of the excessive reserve. If, as before outlined, it was predicated upon regular charges for depreciation to operating expenses, and if these past accounting provisions have been duly recognized by the regulatory authorities, I feel that the full deduction of the reserve should be made, and the prudent investment would be $75,000,000, which would still be $25,000,000 above the direct capitalization of $50,000,000. However, if the reserve was accumulated without regard to past regulation, especially if the past accounting provisions had never entered directly or indirectly into the fixing of reasonable rates, the proper disposition would be to adjust the reserve to $50,000,000, raise the surplus to $50,000,000, and to establish the initial prudent investment at $100,000,000.

FOURTH, assume the same setup as under three: $150,000,000 plant costs, capitalization of $50,000,000, excessive reserve of $75,000,000, and surplus $25,000,000; but assume further that $25,000,000 of plant costs had been charged to past operating expenses and are not included in the accounting of $150,000,000 plant costs. Now, what should be the disposition of the excessive reserve and the $25,000,000 of plant costs charged to past operating expenses? The answer in regard to the excessive reserve has already been made. As to the past plant charges to operating expenses, the proper disposition again depends on the circumstances under which the operating charges were made, as already presented. But assume now that the question both in regard to the reserve and the past plant charges to operating expenses is resolved against the company, so that the full reserve of $75,000,000 is deducted from the plant costs, and that the $25,000,000 charged to past operating expenses is disallowed in the initial plant cost determinations. The established prudent investment would again be $75,000,000 as under supposition three.

The reviewer evidently was under misapprehension as to how either the excessive reserves deduction or the disallowance of plant charges to operating expenses would affect the showing of prudent investment. It should be clear particularly that the issue in the $25,000,000 plant costs charged to operating expenses is not whether a deduction should be made from the $150,000,000 plant costs as shown by the accounts, but rather whether an addition of $25,000,000 should be recognized in the initial original cost determinations. The writer evidently assumed a deduction of the $25,000,000 from the $150,000,000 plant costs, rather than a disallowance of an addition. If there has been actual investment by a company, and if it has been maintained, there can be no showing of zero or negative prudent investment.

But, in any case, what I am urging as necessary for administrable regu-

lation is to establish definite initial findings and then fix exact accounting provisions for subsequent maintenance of the rate base.

While the initial determinations involve factual uncertainties and require reasonable adjustments and compromises, the follow-up and permanent provisions are definite as to amounts and exact as to their bearing upon the administration of public utility rate making.

—JOHN BAUER,
Director, American Public Utilities Bureau.

Judge Bone and the Great Utility Tax Steal

NEWLY named to the bench of the U. S. District Court in his native state of Washington, Federal Judge Homer T. Bone, until recently U. S. Senator from Washington, unleashed a savage attack on the private power industry in the May issue of *The International Teamster.* This is the official magazine of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (AFL).

In what may be regarded by some as a surprising commentary on judicial temperament, impartiality, and fairness of viewpoint, Judge Bone goes on to charge that privately owned public utilities — especially the electric power industry— are engaged in a gigantic confidence game at the expense of other taxpayers and the American public, by representing that they pay a great deal of taxes while in fact they pass it all on to their customers. His accusation intimates that public utilities alone, of all other industries, resort to this snide subterfuge.

Judge Bone's article states:

> The status of private electric power companies of the United States in this tax picture is indeed an interesting one. Under systems of so-called state regulation of rates and charges, these private outfits are permitted to add to electric bills, and pass on to the consumer every penny of all the taxes they pay to local, state, and Federal governments.
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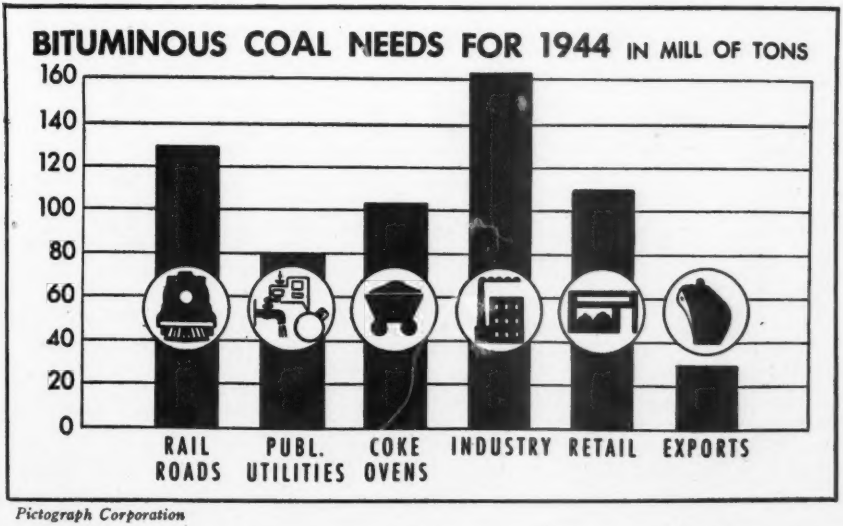
> Taxes have also been declared by the courts to be an "operating expense," and stand in the same category as wages paid



Pictograph Corporation

out by these concerns. Since all of this is accomplished under law and the sanction of the courts, the claims of these companies that they are "heavy taxpayers" constitute about the cheapest bit of buffoonery the country has ever witnessed. They are not taxpayers. They are tax collectors. They collect every penny of the taxes they pay from their customers, and merely pass these taxes on to the proper taxing agency. The next time any reader of this journal sees a big advertisement of a private power company in which it boasts about the taxes it pays, the facts will provide a complete refutation of that claim.

Hitler has given the world an illustration of how a falsehood, repeated frequently enough, takes on the aspect of truth in the minds of many folks. Private power companies have spent huge sums of money advertising a virtue which they do not possess.

The Federal government recently attempted to compel one big private power company to make some sort of tax contribution from its own profits, and objected to its passing on to consumers all the war taxes which the government was collecting.

The private power company stoutly resisted the attempt of the Federal government to make it pay any portion of its taxes out of company profits, but insisted upon a recognition of the rule that it be permitted to pass on to consumers all of these taxes. Under such conditions, it would make absolutely no difference to the company how much taxes amounted to, as long as the owners of the power property were not compelled to contribute any part of them out of company profits. . . .

Outside of the utility field, there is not a single business enterprise in America which operates under the sort of tax rules I have described. It is also of more than passing interest to note the fact that private power companies are also permitted to charge advertising to the consumer, and this sort of expenditure is regarded as an "operating expense."

THE obvious fact, of course, is that there is no other industry — regulated or unregulated—that doesn't do the same thing the public utilities do, as far as passing on taxes to their ultimate consumers is concerned. Judge Bone must surely know that from the time he gets up in the morning and shaves himself with a tax-paid razor until he goes to bed at night and throws his tax-paid shoes under the bed, practically every article of human consumption or utilization with which he comes in contact has been sold successively down the line, from the manufacturer through the distributor and retailer, on the basis that the price received on these successive transactions would afford some sort of profit over and above the taxes which the vendor (manufacturer, distributor, or retailer) must pay in addition to other business and operating expenses.

If this were not so, it is clear that none of these commercial interests could possibly stay in business except on the basis of charitable nonprofit enterprise or subsidy.

The same rule must hold, of course, for privately owned utilities. The only exception to this elementary rule of business mathematics would be government services and products which are not only tax exempt but, in most cases, tax subsidized in the bargain.

As a matter of fact, until the OPA controls were placed on general commercial commodities and services for the war emergency, public utilities, by reason of their previous status as regulated businesses, were about the only forms of business which did not have the right to increase prices *automatically* to offset any tax increases. For the duration, previously unregulated business must now seek specific authority from OPA to increase ceiling rates to offset tax increases (as in the case of recent OPA-approved liquor price increases to offset excise taxes). Public utilities have always had to do this, as Judge Bone should well know.

The balance of Judge Bone's article goes on to urge the establishment of public power systems, under which the problem of passing on taxes would undoubtedly be eliminated entirely—for the simple reason that they would not even be collected.

Of course, the burden would be correspondingly spread to other taxpayers, but that is another story.

—F.X.W.

The March of Events

President Urges MVA

THE Murray Missouri Valley Authority Bill pointing the way to unified, comprehensive control and utilization of the waters of the Missouri river system was introduced in the House of Representatives last month by Representative John J. Cochran, of St. Louis.

As the measure already is in the Senate, having been introduced last August by Senator James E. Murray of Montana, the question of applying the successful principles of the TVA to the development of the Missouri river and its tributaries is now squarely before Congress.

The bill would create a Missouri Valley Authority on the general pattern of the Tennessee Valley Authority, with power to build dams, reservoirs, and other works for the prevention of floods, for irrigation of arid crop lands, for the promotion of navigation, for the generation and distribution of electricity, for soil conservation, and in general for the best and broadest development of the resources of the great Missouri river drainage basin.

Representative Cochran said that Senator Murray had asked him to put the bill before the House and he was glad to do so because he thought it offered the only sound solution of the controversial problems which have so long delayed improvement of the Missouri river and its tributaries.

The need of an MVA is demonstrated, Cochran said, by the clashes which have occurred over Missouri river development plans proposed by other Federal agencies. In reports to Congress, the Army Engineers and the Bureau of Reclamation have proposed large-scale developments, estimated costs being over $650,000,000 and over $1,000,000,000, respectively.

Mixed congressional reaction greeted a recommendation by President Roosevelt on September 21st that an agency similar to the Tennessee Valley Authority be set up for the Missouri river basin. Senator Robertson, Republican of Wyoming, told a reporter he was against "such a Federal setup" and instead favored "state control of waters in the respective states." Senator Langer, Republican of North Dakota, said he was "100 per cent for the idea." He, also, has presented a bill under which a Missouri Valley Power Administration would be organized, headed by a $10,000-a-year administrator.

Asserting he always had favored "the TVA for the TVA area," Senator Wheeler, Democrat of Montana, said the "question of whether the type of legislation we want for the Missouri river basin would be identical with TVA must be studied in the light of all existing conditions surrounding the area."

President Roosevelt, in his message to Congress, said that for years he had "advocated the establishment of separate authorities to deal with the development of certain river basins where several states were involved" and the general functions of the TVA might well serve as a pattern.

Representative Rankin, Democrat of Mississippi, on September 20th introduced a bill asking creation of a Missouri River Authority which is identical with the one submitted in the Senate by Senator Gillette, except that it eliminates two sections referring to labor.

Manly Elected FPC Chairman

AT its first meeting with full membership since the Senate's confirmation of the appointment of Leland Olds, the Federal Power Commission on September 21st unanimously elected Basil Manly its chairman for the period ending June 22, 1948, the expiration date of Mr. Manly's present appointment. Mr. Olds, the commission's former chairman, was unanimously elected vice chairman for the remainder of 1944.

Mr. Manly, who was born in Greenville, South Carolina, on March 14, 1886, has served as acting chairman of the commission for the past three months. He was vice chairman of the commission from 1933 to 1936 and has been reëlected to that office for the years 1942-1944. Mr. Manly was first appointed a member of the FPC in 1933 and was commissioner in charge of the National Power Survey and the Electric Rate Survey in 1933-1936.

In 1938 Mr. Manly was appointed by President Roosevelt as vice chairman of the National Defense Power Committee, which devised plans for the wartime mobilization of electric power supply, and he also served as chairman of the committee on generation and distribution, National Association of Railroad and Utilities Commissioners, in 1939.

During World War I Mr. Manly was joint

chairman, with former President William Howard Taft, of the National War Labor Board.

President Hails Rural Electrification

PRESIDENT Roosevelt last month expressed the opinion that due to the "press" of the war "many of us have overlooked the rapid expansion which has taken place in rural electrification since this administration instituted the Federal rural electrification program in 1935."

The occasion for Mr. Roosevelt's comment was the signing of a bill recently passed by Congress to give statutory authorization to several New Deal agricultural programs for which Congress appropriated money from time to time. The measure, known as the Pace Bill, provided, among other things, for permanent authorization for the loan funds of the Rural Electrification Administration as well as a "liberalization" in the current terms of the advances.

"Those provisions will make it possible to bring electricity to many more thousands of farm homes which could not previously be served," Mr. Roosevelt said in a formal statement issued from the White House in connection with his approval of the legislation.

In emphasizing the extension of electrification in the farm areas under the New Deal, Mr. Roosevelt said:

"When the program was instituted in 1935, only one out of every ten of our farm families had central station electric service. Today 43 per cent of our farms are electrified—in spite of the necessary curtailment in construction resulting from the exigencies of war.

"On the other side of the picture, we must bear in mind that there are still approximately seven million farm houses and other rural homes still without the benefits of electricity. The comforts and economic advantages of electricity are greatly desired by these American homes. I am sure of it, and I am sure that you agree with me. Not only are these rural dwellers of America anxious to participate in the advantages of farm electricity, but most of them, as a result of improved farm income, are now in a better position to acquire and make effective use of electrical labor-saving devices."

Opposes Utility Profits

ASSERTING that surveys are being made by public utility companies for the purpose of building electric lines in "lucrative territories," Agriculture Secretary Wickard said recently no one should be permitted to erect lines that would serve only profitable areas.

Such a practice, he told a quarterly meeting of the Wisconsin Electric Coöperative, would make it impossible for the Rural Electrification Administration to serve other areas without a loss.

"If we permit cream skimming of all the good territories, a lot of people are going to be left without the benefits of electricity."

Saying he knew how anxious farm families have been to obtain electricity, Mr. Wickard added that "unless you and I and everyone interested in the welfare of rural people present the real situation to them, they will never realize that their obtaining of electricity may be at the cost of denying someone else the same privilege."

FPC Sets Hearing Dates

THE Federal Power Commission on September 19th announced its order setting hearing for October 24th at Denver, Colorado, on an application filed under § 7(c) of the Natural Gas Act, as amended, by Kansas-Colorado Utilities, Inc., Lamar, Colorado, for a certificate of public convenience and necessity to acquire and operate all the Central Gas Utilities Company's facilities located in Baca and Prowers counties, Colorado, and Stevens, Stanton, Hamilton, and Grant counties, Kansas.

The facilities Kansas-Colorado Utilities proposes to acquire include, according to the application, one wholly owned gas well, an undivided one-half interest in three gas wells, oil and gas leases, and a pipe-line system of which the principal transmission line runs from a point in Stevens county, Kansas, in a northwesterly direction to a point near Johnson, Kansas, and from there in a northwesterly direction to Lamar, Colorado. From the point near Johnson another line runs in a southwesterly direction to Springfield, Colorado.

According to the application, the company proposes to pay the Central Utilities Company $1,000,000 for the property to be acquired plus the inventory value of the merchandise and supplies on hand at the date of acquisition. The applicant will issue securities to finance the transaction. It is proposed to complete the acquisition on November 1, 1944. No change in the rates established by the Central Gas Utilities Company was proposed, the application stated.

The facilities, which will be operated as a single integrated system, will be used to serve gas consumers in Syracuse, Kansas, Lamar, and Springfield, Colorado, and some twelve smaller Kansas and Colorado communities, as well as five industrial consumers located along the main transmission line.

The order setting hearing provides that interested state commissions may participate in the hearing as provided in the Provisional Rules of Practice and Regulations under the Natural Gas Act.

The FPC has also announced its order setting hearing for October 23rd at Denver on an application filed under § 7(c) of the Natu-

ral Gas Act, as amended, by the Canadian River Gas Company for authority to construct and operate an additional 600-horsepower compressor unit and a 125-kilovolt ampere electric generator and other necessary equipment at the company's Dalhart compressor station, near Dalhart, Texas.

Power Figures Released

APPROXIMATELY 45 per cent of all electric energy consumed in the five Pacific Northwest states of Oregon, Washington, Idaho, Montana, and Utah during the 12-month period ended June 30, 1944, was supplied by the two big Federal power plants at Bonneville and Grand Coulee dams, according to figures released on September 14th by the Bonneville Power Administration.

During the fiscal year 1944, the Bonneville Administration sold more than 8,500,000,000 kilowatt hours of electric energy at a total cost to its customers of $20,893,363, or an average of 2.39 mills per kilowatt hour. The rapid growth of the Bonneville Power Administration to its present position as one of the three largest power-marketing agencies in the nation is shown clearly by a comparison with 1939 power sales which totaled only 30,042,911 kilowatt hours at a cost of $49,835. Present output of the Bonneville and Grand Coulee power plants is averaging between 25,000,000 and 30,000,000 kilowatt hours per day, or approximately 10,000,000,000 kilowatt hours a year.

Navy Lukewarm on Seaway

THE Navy Department has "no objection" to the proposed St. Lawrence river improvement program as a postwar project, it was revealed last month.

In what was considered a lukewarm effort in support of the project, which would deepen the St. Lawrence to permit sea-going vessels to ply the Great Lakes, Secretary of the Navy James Forrestal wrote Senator Josiah W. Bailey, Democrat of North Carolina, chairman of the Senate Commerce Committee, of the Navy's position.

The letter, dated September 7th, was written in response to the committee's request for a Navy report on proposed St. Lawrence legislation.

Forrestal wrote that while certain benefits would accrue to the national defense from the proposed seaway improvements, it was the view of the Navy Department that because of the general man-power shortage and the higher priority which must be given other projects in efficiently prosecuting the war, the work should not be undertaken at this time.

If the legislation were amended to provide for the proposed improvements as a postwar project, the Navy Department would have no objection to its enactment, Forrestal added.

Senator George D. Aiken, Republican of Vermont, author of the measure, has stated that the seaway improvement would be proposed as a postwar project to stimulate employment. He said that he intended to attach it to the Rivers and Harbors Bill when that legislation, already passed by the House, comes up in the Senate.

Leo T. Crowley, Foreign Economic Administrator, urged Congress on September 21st to approve the $420,000,000 St. Lawrence seaway and power project for immediate construction after the war, declaring it would facilitate commerce and aid the New England states. His views were set forth in a letter which Senator Aiken read to the Senate. The Vermont Republican contended that Senator Overton, Democrat of Louisiana, as head of a subcommittee considering the project, had blocked consideration of it because Overton believed it would injure New Orleans and other southern ports commercially.

"The power supply provided by this project is needed in the northeastern section of the United States in an area that contains 20 per cent of the population, and nearly 25 per cent of manufactures in the United States," Crowley wrote Aiken.

"As we return to peacetime commerce we are going to need this facility more than ever before because greater international exchange of goods and services must be one of the foundations of peace. . . . It is truly a project for the national welfare."

Poe Doubts Conversion

CONVERSION of either the 24-inch crude oil or the 20-inch petroleum products pipe lines, two emergency projects operating from Texas to the East coast, to the transportation of natural gas is unlikely, in the opinion of E. Holley Poe, authority on natural gas and former executive vice president of the government's Petroleum Reserves Corporation.

Mr. Poe's remarks were made in answer to a question posed recently at the meeting of the Empire State Petroleum Association. He said he could not foresee the conversion based on the status of the markets, problems of regulation, and taxes.

Mr. Poe said the 20-inch line might be adapted to the movement of natural gas but "in my judgment it would be difficult to convert that line with sufficient pressure to deliver a quantity of gas here." He remarked that he had no opinion on the 24-inch line but added: "I can't see the necessity for it at this time nor for the near future."

Mr. Poe said that completion of the Tennessee Gas & Transmission line project this month would probably alleviate care of the shortage of natural gas in the Appalachian area.

He said the fuel oil and natural gas industries continue to overlap in the fields of heating and power generation in certain regions of this

country "but any competitive factors involved in supplying such markets are infinitesimal when compared with the inroads which other industries will attempt to make on our business when the war is over. In the gas industry we are faced with the uncertainties of additional regulation both from the Federal and state governments. We are going to have to determine those uses to which we think natural gas should be devoted and this decision will take careful thinking, wise planning, and constructive presentation of our case before those authorities who are most interested at this time in the conservation and utilization of our resources."

FPC Announces Authorization

THE Federal Power Commission on September 22nd announced its order authorizing the Southern Natural Gas Company, a Delaware corporation with its principal offices in Birmingham, Alabama, to construct and operate additional facilities in Alabama, Georgia, Louisiana, and Mississippi and to abandon about two miles of pipe line near Bessemer, Alabama.

The facilities, with the exception of a dehydration plant in the Monroe gas field near the company's Perryville, Louisiana, compressor station and a new water-cooling system at that station, have been completed and are in operation, and last month's order provides that the additional facilities at Perryville shall be completed before the end of the year.

The facilities involved in the order are required, the order states, for the delivery of natural gas to a vital war industry and to maintain adequate service to the company's existing customers. The line the company proposes to abandon has not been used for several years and serves no useful purpose in its present location, the order added.

Would Alter SEC Act

SENATOR Arthur H. Vandenberg, Republican of Michigan, on September 19th introduced legislation to change the level under registration provisions of the Securities and Exchange Act from $100,000 to $300,000. He said his proposal was in the interest of stimulating flow of capital into small enterprises after the war.

The bill was in line with comments of Chairman Ganson Purcell of the SEC made public last month, in which the chairman said if "it should be deemed by Congress to be sound policy to relax the registration provisions of the act in an effort to stimulate the flow of capital into small business enterprises, we believe it would be preferable to do so by raising to $300,000 the exemption provided . . . rather than by relaxing the disclosure requirements generally."

Arizona

Makes Purchase Offer

AN offer of $9,000,000 for properties of the Tucson Gas, Electric Light & Power Company, a subsidiary of Federal Light & Traction Company, was made recently by Mayor Henry O. Jaastad of Tucson in a telegram to C. H. Nichols, president of Federal Light & Traction.

The offer was made in accordance with a recommendation by the Tucson city council and a recently appointed citizens' utilities committee. The committee urged early steps toward acquisition of the properties, in order to forestall a possible offer in excess of the $9,000,000 valuation fixed by Duff & Phelps, Chicago engineers, employed by the city to appraise the properties.

Arkansas

Attacks Rate Order

ANNULMENT of an order by the state utilities commission requiring Arkansas Power & Light Company to reduce its gross electric revenues by $975,000 a year was asked in a suit prepared on September 15th for filing in Pulaski County Circuit Court.

Setting forth eleven particulars in which it contended the department's findings were erroneous and unlawful, the petition charged that the order was "arbitrary, capricious, and unreasonable" and outside the department's jurisdiction. It was charged the commission ignored company evidence on reproduction costs and the value of its properties.

The commission order was issued June 24th, after hearings that continued for five months.

Asks Bigger Appropriation

THE state utilities commission included in its 1945-46 budget request to the comptroller last month a provision for a $5,000-a-year job as attorney.

The present appropriation includes a $10,000 item for special services out of which special attorney's fees have been paid. Richard

B. McCulloch has served the commission as special attorney. The $10,000 is included also in the budget request.

The commission sought an appropriation of $126,100 in place of the present $119,000. It asked for $1,500 for office equipment and asked $4,200 for the job of rate engineer-statistician.

A lower-paid job was abolished.

Has Postwar Program

THE Arkansas Power & Light Company was recently reported to be working on a postwar program that can be placed in effect immediately after the war with Germany is terminated. President C. H. Moses, addressing stockholders of the company at their annual meeting in Little Rock, said "events in Europe are moving so fast that our engineering department is having difficulty in keeping up with our speedy postwar program." He intimated that the company has completed a postwar program costing several million dollars.

Stockholders reëlected the board of directors, which then reëlected all officers. The stockholders approved the company's refinancing program.

California

Hetch Hetchy Talks Start

THE first of a series of conferences between San Francisco city officials and the Pacific Gas and Electric Company on disposal of Hetch Hetchy power was conducted last month in Mayor Lapham's office.

Lapham; Marshall Dill, president of the city utilities commission; Utilities Manager E. G. Cahill; and Dion Holm, assistant city attorney, met with James Black and John P. Coghlan, president and vice president, respectively, of the PG&E.

Describing the session as "purely exploratory," Lapham said that the meeting was devoted to a discussion of the proposal offered by Abe Fortas, Under Secretary of the Interior, that the city rent PG&E facilities for cash and distribute the power for municipal uses.

Fortas also suggested that the city sell to large outside consumers.

"We are proceeding in good faith along the lines that Fortas suggested," Lapham said. "We have not much time, as the plan must be prepared by January 1st. However, the PG&E has indicated its willingness to coöperate."

Black said that he was familiar "in a general way" with the Fortas proposal. But, he added, there were obstacles which would have to be removed. He said that it would be a difficult task to work out a deal in which the city would make as much off the power as it has in former years. Revenue from Hetch Hetchy power in the past has brought the city $2,400,000 annually.

Colorado

Agrees to Buy Gas Company

THE Public Service Company of Colorado has reached an agreement to buy Pueblo Gas & Fuel Company, which distributes natural gas to the city of Pueblo, it was learned in financial circles recently. Cities Service Power & Light Company is the seller. The Securities and Exchange Commission must approve the deal.

A check-up at offices of the Public Service Company in Denver brought the statement that a contract was being drawn up for the sale, but final papers had not yet been signed.

Explaining the deal, Public Service officials said the local company planned to buy the 3,500 shares of common stock of a par value of $100 each. The price was reported to be between $350,000 and $400,000. Pueblo has $298,000 of 5 per cent bonds outstanding. These are due in 1953.

The purchased company would operate under its present incorporation and name and there would be no change in personnel, officials said.

The Cities Service Power & Light Company acquired the Pueblo Company about thirty years ago.

Illinois

Orders Lines in Bankruptcy

A DRASTIC move toward reorganization of Chicago's antiquated traction system was made on September 18th when Judge Igoe of the Federal District Court ordered the Chicago Surface Lines into bankruptcy and appointed four trustees and a new executive to manage the properties.

In a written opinion Judge Igoe, having held

that the city of Chicago had no legal right to make any so-called offer for the surface and elevated lines, with a view to unification under municipal ownership, gave more than a significant hint that the surface lines might be allowed to reorganize separately without a franchise.

Two of the trustees appointed have been receivers for the surface lines in equity receivership, which endured for seventeen years. They are Charles H. Albers and Edward J. Fleming. The others are Charles C. Renshaw and Thomas J. Friel.

The new executive head of the lines is John E. Sullivan. His title is chairman of the joint board of management. He has been chief financial officer of the surface lines since 1941 and also has the titles of vice president and treasurer.

Sullivan and the trustees are to administer the business affairs of the lines and as "disinterested parties" formulate a reorganization plan. It was indicated that Walter A. Shaw, the present joint board head, would be retained in an executive capacity.

Judge Igoe said the court favored improvement of the properties and set October 1st as a date for hearing on the matter.

Iowa

REA Plans More Farm Power

POSTWAR plans to install 5,900 more miles of electric lines to serve 85,000 more Iowa farms were discussed at the opening session on September 20th of the Iowa Rural Electric Coöperative Association's 2-day annual meeting held at Des Moines.

More than 350 men from the 52 rural electric coöperative associations in Iowa gathered for the third meeting of the organization.

Six committees formed by members of the association have been working on postwar plans for the construction of new electric lines that will enable nearly every farm home in Iowa to be equipped with electric power a few years after the war.

"The REA now serves over 60,000 farm homes in Iowa that are producing food for the war effort," O. J. Grau, president of the association, said. He pointed out that there are approximately 200,000 farm homes in the state.

The Iowa association was said to be the strongest REA organization in the United States. Out of the 52 rural electric coöperatives in the state, 51 are members of the association. The only coöperative that is not a member was represented at the meeting, however, Grau said.

Harry Slattery, REA Administrator, told the delegates every farm home in the United States will be able to have electric power a short time after the war ends. He said a committee was set up two years ago to give consideration to a postwar program.

"In the post Civil war days it was the transcontinental railroads and construction of canals and roads that took up the unemployment sag of the men who came from the battlefields and after this war the REA will play an important part in taking up this sag."

E. Stoneman, president of the National Rural Electric Coöperative Association, told the convention that he believed appropriations for REA work will probably be considerably larger during the postwar period.

Kentucky

Urged to Investigate Excess Profits

EXCESS profit taxes for utilities should not be deductible as operating expenses, Hal O. Williams, former director of law for the city of Louisville and now an attorney for the Office of Price Administration, told the closing session of the fifteenth annual meeting of the Kentucky Municipal League at Mammoth Cave on September 21st.

Recent decision of the Michigan Supreme Court, which resulted in a $10,450,000 rate refund for customers of the Detroit Edison Company, of Detroit, was explained by the speaker. He said the decision was to the effect that normal taxes may be deducted as operating expense, but high taxes brought on by the war should not be classed as a deductible item.

Maryland

Sale of BTC Stock OK'd

THE state public service commission on September 20th approved the petition of American City Lines, Inc., for permission to obtain up to 30 per cent of the total voting securities of the Baltimore Transit Company.

At the same time, the commission, in effect,

impounded the transit company's maintenance and equipment reserves, amounting to more than $6,000,000, expressly stipulating that this money could not be transferred or diverted to any other purpose.

In granting American City Lines, part of a large and growing public transportation empire, permission to buy 30 per cent of the Baltimore Transit Company's voting securities, the commission made it clear that it meant 30 per cent and no more.

The commission also stipulated that American City Lines must report, with affidavits, the acquisition of any voting trust certificates or stock immediately upon purchase and that after January 1, 1945, there must be a quarterly report showing any additional purchases, the amounts invested, and the percentage of total voting rights possessed.

American City Lines is a part of a group of interlocking and subsidiary companies operating public transportation systems in 31 towns and cities, including St. Louis, with general offices in Chicago.

Nebraska

To Vote on Deal

FATE of the Consumers Public Power District distribution system in Beatrice will be decided November 7th, when Beatrice citizens vote on a proposal whereby the city would take over the system and consolidate it with the municipal system.

The ordinance, taking the issue to the people, was signed last month by Mayor Bert A. Manning and approved by the council, which also rejected Consumers' prices of $917,000 for complete properties and $664,000 for distribution lines.

The ordinance was passed after Public Works Commissioner Velmer J. Morris and City Engineer Ed Thieman told the council negotiations for an acceptable price for the properties had proved futile and that there was no basis for further negotiations.

Properties to be acquired under the proposal include only the distribution system, exclusive of the generating plant. If a majority favors unification of the electric systems under city ownership, the state supreme court will designate three district judges to fix the price.

Lawyers File Brief

ATTORNEYS for the Nebraska Power Company, appearing this time in the rôle of attorneys for Martin W. Nelson and Edward A. Hoffman, who were successful in securing a district court decision at Omaha halting negotiations for the purchase of the company's property by the city, filed a 150-page brief in the state supreme court on September 14th, where an appeal had been lodged.

The attorneys took the position that the electors have the legal right, before the Peoples Power Commission takes any further steps, to ask a vote of the people whether they want to buy the property or not. They said that the petition signed by Nelson and Hoffman and 26,000 others properly invoked the referendum section of the home rule charter.

They cited a number of legal authorities to show that the go-ahead resolution of the council could not be designated as administrative or executive or judicial in character (such resolutions are not subject to referendum), and to support their position that the resolution involves the determination of a permanent public policy.

It was argued that the action of the city council was legislative in character, and that to say that the referendum ordinance did not apply to the resolution in question was to narrowly construe that section of the home rule charter providing for a referendum. They pointed out that the law under which the council acted did not purport to declare that the creation of a power commission was necessary in the public interest, and hence it is left for the electors of the city, in advance of any act of negotiations looking to a purchase or condemnation, to say whether they want such action to be taken.

The resolution of the committee of 59, adopted by the city council on September 18th, recommended further effort to agree upon price through negotiations and when, in the judgment of the city council, such further effort has failed, the lawmakers follow the statutory method of appraisement.

While final decision rests with the council, Stanley Maly, chairman of the special "price" committee, said he was convinced that the committee had reached the point where further negotiation effort was useless.

New Jersey

Disputes FPC Figures

THE Federal Power Commission proposal to revise Public Service Electric & Gas Company's electric plant valuation downward by $68,000,000 "clearly violates" FPC's own system of accounts. This opinion was expressed recently by Lyle McDonald, company

vice president and controller, before FPC Examiner Edward B. Marsh. McDonald testified at a hearing on an order directing the company to show cause why it should not revise its $350,000,000 electric plant total sharply downward. The staff has charged that $68,000,000 represents write-ups and other inflationary items over original cost.

McDonald, under questioning by Randall J. LeBoeuf, Jr., of New York, special company counsel, asserted the reclassifications asked by the FPC staff disregard the actualities of the company's structure and would weaken its credit. LeBoeuf at the opening of the hearing on September 18th said that the revisions would make the company appear insolvent. Going into detail on the FPC staff's report, McDonald said two of its accounting classifications are "mere fictions" which do not appear in the FPC regulations.

New York

Plans Rate Cuts

RALPH H. TAPSCOTT, president of the Consolidated Edison Company of New York, Inc., on September 15th promised lower rates for consumers of the Consolidated Edison system upon completion of a proposed merger of five operating subsidiaries into the parent company to form a single operating setup.

In a statement submitted to the state public service commission, Mr. Tapscott declared that financial economies made possible through the proposed consolidation, which the state agency has been asked to approve, would be made available immediately for rate reductions and further standardization of rate structures.

Mr. Tapscott estimated that immediate savings upon completion of the consolidation would total between $650,000 and $1,000,000 a year in operating expenses and that, in addition, there would be a gross saving of about $1,250,000 in taxes, based on 1943 figures. Other economies, he said, would materialize over a period of years.

System companies involved in the proposed consolidation include the Brooklyn Edison Company, Inc., the New York & Queens Electric Light & Power Company, the New York Steam Corporation, the Westchester Lighting Company, and the Yonkers Electric Light & Power Company. Formal petition was made to the commission two months ago.

Board Heads Quit

THREE members of the board of directors of Niagara Hudson Power Corporation, including Paul A. Schoellkopf, chairman, resigned on September 21st, declaring in a letter to the directors that they wished to devote their time to reorganization of the company's western New York affiliate, Buffalo, Niagara & Eastern Power Corporation.

Mr. Schoellkopf will continue as chairman of the board of Buffalo, Niagara & Eastern and as president of Niagara Falls Power Company. Resignations of Colonel William Kelly, president of Buffalo, Niagara & Eastern, and Dr. Norman R. Gibson, vice president of Buffalo, Niagara & Eastern, were also submitted at a meeting of the Niagara Hudson board.

Earle J. Machold, president of Niagara Hudson, said that the resignations would not affect the relations existing between Niagara Hudson and Buffalo, Niagara & Eastern Power Corporation, and added that the board of Niagara Hudson had accepted the resignations "with deepest regret."

Ohio

Utility Sale Stays

THE Securities and Exchange Commission on September 22nd denied rehearing on the proposed sale by Associated Electric Company of Ohio-Midland Light & Power Company, Canal Winchester, Ohio, to three electric coöperatives.

Petitions for rehearing were filed by seven villages in the area served by the company—Canal Winchester, Lockbourne, Carroll, Lithopolis, Tarlton, Amanda, and Groveport—and by Columbus & Southern Electric Company, another bidder for the utility. The petitions allege that the coöperatives intend to reorganize Ohio-Midland in "contravention of the Ohio law and without the approval of the public utilities commission of that state."

Oklahoma

Gets Edge in Power Division

OKLAHOMA will get about 55 per cent of the power output at Denison dam on the Red river, with Texas getting the remainder, Governor Kerr said recently in Washington after a conference with Interior Department power officials.

Commenting on the division of the electrical energy from the big federally financed project, the governor said allocations would be made on a priority basis, with war projects, Rural Electrification Administration systems, and municipalities placed ahead of private utilities in the bid for the power.

The governor was reported to have said it was because of this order and the fact that 70 per cent of the lake created by the dam is in Oklahoma, that the state will receive more than half of the power.

But before municipalities and REA systems in southern Oklahoma can receive power from the hydroelectric plant, many miles of transmission line must be constructed.

Pennsylvania

FPC Approves Proposals

THE Federal Power Commission on September 19th announced its approval of proposals by the Scranton Electric Company, Scranton, to eliminate from its electric plant accounts amounts totaling $6,357,561.09 representing write-ups, intercompany profit on engineering and supervision fees, and other excess over original cost. In detail, the company's proposals reflect the recommendations made by the staffs of the FPC and the Pennsylvania Public Utility Commission.

Security Award Presented

THE Philadelphia Gas Works Company recently was presented with the National Security Award. This is a certificate of merit given by the United States Office of Civilian Defense for outstanding accomplishment in maintaining a superior standard of protection and security. The award recognizes an achievement through effective joint efforts to safeguard production, employees, and property, and stands as a mark of distinction in the nation's war effort.

South Carolina

City Seeks to Acquire Utilities

THE city of Columbia has entered into negotiations for the acquisition of the properties of the South Carolina Electric & Gas Company in Columbia, Mayor Fred D. Marshall said recently.

A majority of the city council has given a New York company the authority to investigate the possibility of the city acquiring substantial properties of the local company, he added.

Although the mayor did not disclose any figure, it was understood that the cost would be approximately $39,500,000.

Attending the meeting at which the authority was given the New York company was the mayor, Councilmen Gary Paschal and Lester L. Bates.

The mayor pointed out that if the city was successful in its efforts to acquire the utilities in Columbia, the taxes or property of the city would not be pledged but that revenue bonds would be issued.

This is an outgrowth of the Securities and Exchange Commission order that the properties be disposed of.

Mayor Marshall said that should the company agree to sell to the city of Columbia that it would be necessary to hold an election approving the action of the city council and that a test case of the action would be taken to the state supreme court before the final agreement would be reached.

Washington

Opposes Referendum

A STATEMENT expressing opposition to Referendum No. 25, the public power measure, which will appear on the general election ballot November 7th, has been issued by Ira S. Davisson, founder of Tacoma's municipal power system, it was announced recently by the citizens committee against Referendum 25.

In a letter to Emmett T. Anderson, chairman of a Tacoma committee opposing the referendum, Davisson said:

"In 1931 the believers in public utility districts presented a measure before the legislature in Olympia. Having closely studied this bill, it was very clear to us in the light department that the original wording was dynamite if directed toward municipal ownership. Upon contacting J. D. Ross (founder of Seattle's City Light) I found him of the same opinion.

"Referendum 25 has dangerous possibilities," Davisson wrote.

The referendum would enable public power districts to act jointly in the acquisition of power facilities.

The Latest Utility Rulings

New Accounting System Not to Be Applied Retroactively to Write Down Surplus

A MOTION by the defendant for summary judgment in an action to annul an accounting order of the Federal Communications Commission, in 52 PUR(NS) 101, was denied by the district court, southern district of New York, on the ground that there must be a fair consideration of the circumstances relating to accounting for the purchase price of property in excess of original cost.

The commission had directed the New York Telephone Company to reduce its surplus by the amount of excess of payments to American Telephone and Telegraph Company, its parent, for property acquired at prices above net book cost to the parent company at the time of the purchase.

The property had been acquired from the American Company prior to 1933, when a revised system of accounts became effective. The purchase price of toll plant acquired had been agreed upon as being an amount equal to reproduction cost less deterioration determined by field inspection and detailed appraisal. The price of instruments had been approved by qualified engineers.

At the time of these transactions the telephone company, under the Interstate Commerce Act, was prohibited from keeping any other accounts than those prescribed by the Interstate Commerce Commission. The court ruled that the company had entered the actual money cost of the property in accordance with the system of accounts then in effect. Plant and equipment furnished were, under existing accounting rules, to be entered at appraised value.

Subsequently, after enactment of the Federal Communications Act, new accounting requirements were prescribed and these were attacked in court by telephone companies on the ground, among others, that the definition of original cost would require the companies to restate, as of January 1, 1936, their property investment account by eliminating the recorded cost or investment in property acquired from another public utility. The courts, in ruling against the companies, acted upon an assurance and stipulation by counsel for the commission that amounts included in Account 100.4, Telephone Plant Acquisition Adjustments, when deemed to represent an investment made in assets of continuing value, would be retained in that account until such assets ceased to exist or were retired. The Supreme Court, in 81 L ed 142, 16 PUR(NS) 225, 57 S Ct 170, accepted this declaration as an administrative construction binding upon the commission in its future dealings with the companies. It was then said that the administrative construction devitalized the objection that the difference between present value and original cost was withdrawn from recognition as a legitimate investment.

Here the accounting practice followed at the time of acquisition was in conformity with the rules of the Interstate Commerce Commission. Testimony that it did not follow good accounting practice would be immaterial if the practice followed was within the regulations then in force. The court continued with the following statement:

> The administrative construction referred to, and plainly appearing in the stipulation then filed by the counsel for the Federal Communications Commission, is not present in any of the other cases to which our attention has been called; and this case, for

that reason, if for no other, is clearly to be distinguished from those cited. That administrative construction, if none other, it seems to us, precludes the action now taken until (1) there has been a "fair consideration of all the circumstances," and (2) unless the difference between the original and present cost is not "a true increment of value" but is a "fictitious or paper increment"; and action to obliterate must depend upon "evidentiary circumstances" later to be developed.

Here there has been no determination whether the difference between original cost and the price claimed to have been paid is a true increment of value, unless it is the arbitrary determination that it cannot be because it is the result of a transaction between a parent and an affiliate. There might be real doubt to make such a determination if based upon any such theory. New York Edison Co. *v.* Maltbie, 244 App Div 685-689, 281 NY Supp 223, affirmed 271 NY 103.

The transaction had been recorded at "actual money costs," and the court did not understand that the fairness of the appraisals then made was questioned. The commission's position was that the fairness of the appraisals was immaterial because in transactions between affiliates the transferee is bound to take the transferor's net book cost. But, said the court, if the entries were correct when made, the commission, under the record, could not "apply retroactively a new system to write down the plaintiff's surplus." *New York Telephone Co. v. United States et al.*

Plan for Bond Redemption without Premium Payment Approved by Court

An order to enforce and carry out a plan for compliance with § 11 of the Holding Company Act was granted by the district court for the eastern division of the eastern judicial district of Missouri, in a proceeding pursuant to §§ 11(e) and 18(f) of the Holding Company Act relating to the Laclede Gas Light Company, Laclede Power & Light Company, Phoenix Light, Heat & Power Company, and Ogden Corporation. Objections raised by bondholders were based upon provisions in the bonds that they might be redeemed by the company at any time at par and accrued interest and such premium, if any, as the board of directors might determine at the time of issuance of the bonds. The plan provided for payment and discharge of the bonds without payment of a premium.

Approval of the plan, said the court, turned on decision of the following questions: (1) Is the plan an involuntary one and in the particular objected to? (2) If involuntary, has the commission power to authorize action contemplated by the plan and objected to? (3) Is the plan fair and equitable and appropriate to effectuate the provisions of § 11 of the act? If these questions could be answered in the affirmative, the plan should be approved, otherwise not.

The court concluded that the plan was not a voluntary one. It had behind it the compulsion of the direction of the commission as well as a Federal court. Ogden and certain of its subsidiaries, including Laclede Gas and Laclede Electric, had filed applications with the commission for approval of a plan, the purpose of which was to effect compliance by Ogden and its subsidiaries with § 11(b) and the terms of an amended plan of reorganization, dated July 10, 1939, of Utilities Power & Light Company, predecessor to Ogden. The order of the commission in the Utilities Power & Light Company Case had been confirmed by the Federal District Court. This order provided for submission of a plan by Ogden. The commission itself had instituted proceedings under § 11(b) and directed that all of the proceedings be consolidated, and out of the consolidated hearing came the order (unappealed from) the enforcement of which was sought.

The court not only held that the plan was not a voluntary one, but that the part of the plan attacked by objectors was in-

voluntary on the part of Laclede Gas, whose bonds were outstanding. An attempt by objectors to narrow the question to "nonpayment of the premium" as being a voluntary act was rejected. It was said that if retirement of the bonds resulted from legal compulsion, the condition upon which payment of premium became due did not exist.

Concerning an objection that § 26(c) of the act was violated because the commission was without power under that section to approve a plan that was contrary to the mortgage contract requiring payment of premiums, the court pointed out that there could be no impairment of a contract where there was no obligation of the contract which had been impaired. The mortgage securing the bonds provided "if the company shall elect to redeem any of the bonds," the bonds might be redeemed at par and accrued interest and the premium. The court was of the opinion that under the terms of the mortgage there was no election because the company was "forced" to redeem the bonds by operation of law. It was an election by the commission. The event calling for payment of a premium was not found in the record before the court.

The court said that, having found that the orders complained of rested within the powers of the commission, the court could not substitute its discretion for that of the commission where there might be more than one way to accomplish the objective if the one selected was fair and equitable to the security holders and appropriate to effect the provisions of § 11. The court concluded that retirement of the bonds by payment of principal and interest was a fair and equitable treatment of the persons affected and appropriate to effectuate the provisions of § 11. *Re Laclede Gas Light Co. et al.*

Lease and Tax Factors Justified Building Sale at Price below Cost

THE sale of an office building by Jersey Central Power & Light Company for $175,000 was authorized by the New Jersey Board of Public Utility Commissioners although the company had recently purchased the building for $925,000. The *prima facie* loss of $750,000, said the board, required affirmative explanation.

The purchase had not been approved by the board, nor under the statute was the board's approval required. The property had been subject to a 25-year lease, terminating December 31, 1951, which required a net cash payment of $78,000 a year and the additional payment by the lessee of taxes and operating and maintenance expenses.

The lessee, Eastern New Jersey Power Company, had been acquired by Jersey Central Power & Light Company in 1931, and the obligations of the lease had been assumed. In 1940, through purchase in bankruptcy proceedings involving Utilities Power & Light Company, the property had been acquired by two unaffiliated individuals. Increases in expenses of building operation indicated that the burden to the lessee would approximate $110,000 for 1944 and subsequently. Purchase of the property by the utility company terminated the lease obligations.

The utility company, as part of the transaction, was to lease the property at $7,500 a year for a 2-year period, in addition to operating expenses, taxes, and maintenance cost. This would result in a reduction of $70,500 in expense.

Another factor motivating the action of the company was the advice of tax experts that by such purchase and sale, involving an apparent loss of $750,000, the income and excess profits tax liability of the utility for the year 1944 would be reduced by $641,250 under existing tax laws. Total savings of approximately $388,600 in operating expenses from the

present time to December 31, 1951, would also result. The board said in part as follows:

> The advice of the tax experts consulted as to tax savings may prove erroneous. If this should be the case it follows that in acting upon such advice the petitioner's directors represented the stockholders and that any failure of expectation of reduction of tax liability will affect the stockholders only through adverse effect upon the earned surplus account. As for the customers of the petitioner, in the event of such failure in anticipated tax savings, the indicated savings in operating expenses will nevertheless and inevitably ultimately flow to them in the making of rates.

An immediate sale was deemed by the management to be desirable because it was expected that sales of holding company stock would change the company's tax status from that of a taxpayer having an excess profits tax net income taxable at 85.5 per cent and making a separate tax return to that of a taxpayer required by law to participate in the joint return of its holding company under such circumstances that its taxable income would be taxed at a rate not exceeding 40 per cent and might be as low as 25 per cent. The tax loss, therefore, at a later date would be substantially less.

It might be suggested, said the commission, that the transactions considered had "tax evasion" for their purpose, although there was no suggestion that the transactions were reprehensible. The commission continued:

> To maximize income by taking advantage of an opportunity to reduce the annual cost of building quarters in the fullest possible degree is not reprehensible but is the duty of the management of the utility. To maximize income by reducing prospective tax liability by taking advantage of a deduction from taxable income allowed by law is not reprehensible. On the contrary, the duty of the directors of the company to both its stockholders and its customers requires that they consider all available and lawful means of reducing capital losses and minimizing both operating expenses and taxes. An attempt by the directors to conduct the affairs of the company so as to create an unnecessary and illusory excess profits tax liability would be reprehensible conduct and would result in a misleading statement of income.

Re Jersey Central Power & Light Co.

Telephone Company Restrained from Serving Hotels Making Illegal Surcharge

VIOLATION by hotels of a tariff provision was held by a Federal court to be a proper basis for enjoining telephone companies from furnishing message toll telephone service to hotels continuing to subject guests to any charge other than the message toll charges of the telephone company itself.

The court held that the Federal Communications Act contemplates the regulation of interstate wire communication from its inception to its completion. A contention that wire communication within the meaning of the act ends at the PBX board and is not thereafter subject to the regulation was rejected. A contention that services rendered by the hotels constitute "telephone exchange service" exempt under the act was said to be contradicted by the evidence.

Defendant hotels in substance claimed that the surcharges were imposed for hotel and secretarial service rendered to guests, and that, as such, they were not subject to regulation. This service was afforded as a matter of hotel accommodation and to meet business competition. The court said that the fallacy of defendants' argument was that, regardless of the nature of the service rendered and of the cost thereof, reimbursement was sought by imposing upon interstate toll service an arbitrary charge which increased the charge for such service above the limit prescribed by regulation. The fact that the amount of such charge was allocated to meet the cost of some particular hotel service rendered was said to be not material. "Public utility service may not be the subject

of unregulated resale by a subscriber to balance a business deficit."

There was no evidence of hotels being agents of the telephone company. Hotels were said to be subscribers for service, but an argument on the question of agency was said not to be applicable as there was no attempt to regulate the service rendered by the hotels. Rather, the Communications Act and the tariff were applicable to the charge made for interstate wire communication. The hotels might render to guests any service which business judgment might dictate, but they might not impose the cost thereof upon the use of a public utility service.

The validity of the tariffs was sustained as against a contention that by changing tariffs existing prior to February 15, 1944, on less than thirty days' notice, there was a violation of § 203 (b) of the Federal Communications Act. That the application for change did not conform to the rules of the commission, the court held, did not void action thereon, as the rules were imposed by the commission and its action in approving the tariffs waived the requirements thereof. *United States v. American Telephone & Telegraph Co. et al.*

Other Important Rulings

THE District of Columbia commission, after further hearing following reversal of a rate order by the court in (1944) 54 PUR (NS) 193, 55 F Supp 627, determined the rate base for the 12-month period beginning September 1, 1944, under the sliding-scale arrangement, fixed the rate of return at 6 per cent, and required that an appropriately captioned reserve be set up on the books of the company for the purpose of recording therein income in excess of the allowed return during the test year ended June 30, 1943. *Re Washington Gas Light Co. (Order No. 2827, PUC Nos. 3361, 3382, Formal Case Nos. 334, 340).*

An order of the Ohio commission denying an application of a motor contract carrier to add a shipper to his list, where the granting of the application was opposed by affected carriers, was not reversed on appeal as unreasonable or unlawful when the particular question presented was a close one and the order complained of rested upon a valid basis touching the public interest. *Fischbach v. Public Utilities Commission, 56 NE (2d) 162.*

The California commission, in authorizing the execution of a conditional sales contract transferring telephone properties, held that under a conditional sale plan of purchase of properties the seller would continue to be responsible for the rendition of service, since legal title to properties does not pass until terms of the contract are completed, but that the seller may permit the buyer to conduct business as his agent, and the buyer must file tariffs and reports with the commission as such agent, while upon completion of the contract the parties might apply to the commission for a final order authorizing the transfer. *Re Dulcich et al. (Decision No. 37038, Application No. 25951).*

The California commission, in authorizing the transfer of operating rights, held that where a carrier did not intentionally limit service to Chinese shippers but transported a substantial amount of traffic for others, there was no exclusive dedication of service to Chinese and consequently no abandonment of the right to serve the public in general. Moreover, the standard of racial characteristics as a basis for classification of a carrier's service was held to be contrary to public interest. *Re Canton Express Co. et al. (Decision No. 37016, Application No. 25182, Case No. 4652).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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PUBLIC UTILITIES REPORTS

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Free Transportation for Armed Forces

August 7, 1944

PETITION *for order authorizing free transportation to members of armed forces of the United States when in uniform; dismissed.*

Discrimination, § 58 — Free transportation for armed forces — Constitutional prohibition.

Free transportation on street railways and busses to members of the armed forces of the United States, when in uniform, would be in violation of § 8 of Art XVII of the state Constitution and in violation of the Act of June 15, 1874, P.L. 289 (67 PS 680), prohibiting the granting of free passes or passes at a discount to any person except officers or employees of the company and clergymen.

(THORNE, Commissioner, concurs in separate opinion.)

By the COMMISSION: The city of Pittsburgh has petitioned us "to issue an order or ruling authorizing and permitting the Pittsburgh Railways Company and the several local bus companies operating within the city of Pittsburgh to allow members of the armed forces of the United States, when in uniform, to ride free of charge on all public conveyances operated by them for the duration of the present war."

We are in full accord with the objective of extending every possible consideration to the members of our armed forces. But the Constitution, the pertinent statutory provisions and the court decisions of Pennsylvania so plainly outlaw the authorization here sought that we are unable to grant the petition.

The Constitution provides in § 8 of Art XVII as follows:

"Section 8—Passes prohibited; exceptions. No railroad, . . . or other transportation company shall

grant free passes or passes at a discount to any person, except officers or employees of the company and clergymen."

The act of June 15, 1874, P. L. 289 (67 PS 680) entitled "An act to carry into effect Art XVII, § 8, of the Constitution, in relation to granting either free passes or passes at a discount of railroad or other transportation companies," prohibits transportation companies from granting passes to any person except an officer or employee and provides that any person signing or issuing a pass except to such officer or employee shall be subject to a fine of not exceeding $100.

The quoted section of the Constitution has been held to apply to street railway companies: Gyger v. Philadelphia City Passenger R. Co. (1890) 136 Pa 96, 20 Atl 399; and to motor transportation companies: Schuylkill Transp. Co. v. Frantz (1932) 11 Pa PSC 218, PUR1932C 171.

The Constitution, the statutory law, and the cases clearly forbid the concessions which the city asks us to authorize, and the declared policy of the commonwealth of Pennsylvania is against free transportation service to anyone except officials and employees of the transporting company and clergymen. The petition must be dismissed; Therefore,

Now, to wit, August 7, 1944, it is *ordered:* That the petition of the city of Pittsburgh asking authorization of free transportation service for uniformed members of the United States armed forces be and is hereby dismissed.

The chairman being absent did not participate in the vote on this order; Commissioner Thorne files a concurring opinion.

THORNE, Commissioner, concurring: It is apparent from the citations in the Commission's order that it is contrary to the express provisions of the Constitution of Pennsylvania for the Commission to authorize the granting of free transportation to men in uniform, or to any other persons except those expressly excepted in Art XVII, § 8. The law is so crystal clear that one wonders why any person, especially those presumably learned in the law, would attempt to have this Commission nullify the express provisions of the Constitution. In Pennsylvania we still live under a government of laws, and not of men who would like to set aside not only the Constitution, but the acts of assembly in order to carry into effect their whims and fancies.

We must, therefore, come to the inevitable conclusion that such a petition was presented for political purposes only with full knowledge that it was unconstitutional, but with the hope that it might embarrass this Commission. The use of the armed forces as an excuse for such an act is not only inexcusable but reaches a new low in political ethics. I fully concur in the position of the Commission in dismissing this case.

Re Brooklyn Union Gas Company

Case 11598
July 26, 1944

APPLICATION *for authority to issue general mortgage sinking-fund bonds and sinking-fund debentures; denied in part and granted in part subject to terms and conditions.*

Security issues, § 17 — Jurisdiction of Commission — Purpose of issuance — Public interest.

1. The Commission has no authority to authorize the issuance of securities unless it can certify that their issuance is "reasonably required for the purpose specified in the order" and unless it finds that such issuance is in the public interest, p. 25.

Security issues, § 106 — Interest rate on bonds.

2. The Commission may not approve an issue of bonds at an interest rate higher than is required to produce the necessary funds, p. 25.

Security issues, § 18 — Factors considered — Scope of consideration.

3. The Commission, in passing upon an application for authority to issue bonds and debentures, not only has the power but also the duty to consider the entire plan and all of the provisions connected with the issuance of the application in order to determine whether the proposed issue is proper and necessary, p. 25.

APPEARANCES: Philip Halpern (by Frank C. Bowers, Assistant Counsel), New York, Counsel for the Public Service Commission; Sullivan & Cromwell (by Arthur H. Dean), New York city, for The Brooklyn Union Gas Company; Cullen & Dykman (by Jackson A. Dykman and S. B. Olney), Brooklyn, for The Brooklyn Union Gas Company; Ignatius M. Wilkinson, Corporation Counsel (by Harry Hertzoff, Assistant Corporation Counsel), New York city, for the city of New York.

. . . . . .

MALTBIE, Chairman: In a petition verified June 19, 1944, the Brooklyn Union Gas Company applied for authority to issue $42,000,000 principal amount of new securities consisting of the following:

General mortgage sinking-fund bonds 3¾ per cent series due August 1, 1969	$30,000,000
Sinking-fund debentures 25-year 4¼ per cent due August 1, 1969	12,000,000
Total	$42,000,000

The general mortgage sinking-fund bonds are to be dated August 1, 1944, and sold privately at 101 per cent of par and accrued interest, to yield the company $30,300,000. The 25-year sinking-fund debentures are also to be dated August 1, 1944, and sold to an underwriting syndicate at 101 per

cent of par and accrued interest. They are to be offered to the public at 102.75 per cent of par and accrued interest. Thus the company will receive $12,120,000 as of August 1, 1944. The proceeds from the sale of these new securities, totaling $42,420,000, together with approximately $8,000,000, will be used to pay off certain bonds at maturity and redeem other bonds and debentures as soon as practicable after the issuance of the new securities.

The entire outstanding funded debt of the company which it proposes to refinance under the plan, together with the premiums that will have to be paid on the callable debt, are as follows:

First mortgage gold bonds	
5 per cent due May 1, 1945, noncallable	$14,000,000
First lien and refunding mortgage gold bonds	
Series A, 6 per cent due May 1, 1947, noncallable	6,000,000
Series B, 5 per cent due May 1, 1957	10,300,000
Principal amount $10,000.000	
Premium, 3 per cent 300,000	
Twenty-year debentures	
5 per cent due June 1, 1950	18,000,000
Premium, 2 per cent	360,000
Total	$48,660,000

The foregoing amount includes neither interest estimated at $1,737,500 [1] the company will be required to pay on these securities between August 1, 1944, and the date of completion of the refunding plan, nor the expenses which are to be incurred in connection with the refinancing estimated at $532,103.

Public hearings on this petition were held in New York city on July 7 and July 17, 1944. Testimony was presented on behalf of the petitioner by B. G. Neilson, vice president, R. B. Loomis, secretary, and G. E. Foster, comptroller of the company. The record in the proceeding consists of 81 pages of testimony and 15 exhibits.

The Brooklyn Union Gas Company was incorporated on September 9, 1895, under the Transportation Corporations Law of the state of New York. Its charter runs in perpetuity. On November 4, 1895, the company acquired all the property, rights, privileges, and franchises of seven gas companies engaged in the manufacture, distribution, and sale of artificial gas in the territory which now makes up most of the borough of Brooklyn. Subsequent to that date, it acquired all the capital stock and bonds of four gas companies operating in the borough of Queens and two additional companies in the borough of Brooklyn (one of the latter an operating company and the other a nonoperating company), and on December 31, 1927, these six companies were merged with the applicant under an order of the Commission dated November 29, 1927, in Case 4429.

At the present, the company sells artificial gas in thirty of the thirty-two wards in the borough of Brooklyn, and in two of the five wards in the borough of Queens, for residential, commercial, industrial, and other purposes. It has two manufacturing gas plants. One known as the Greenpoint Works is located on Newtown creek and has a total estimated daily capacity of 74,000,000 [cubic feet]

[1] According to the latest amended registration statement, this amount will be reduced by $22,500, to $1,715,000.

consisting of 26,000,000 cubic feet of coke oven gas and 48,000,000 cubic feet of carburetted water gas. The other plant, known as the Citizens Works, is located on the Gowanus canal and has an estimated daily capacity of 50,000,000 cubic feet of carburetted gas of which 14,000,000 cubic feet are maintained principally for standby purposes. The aggregate capacity of both plants, 124,000,000 cubic feet, is augmented by an additional 10,000,000 to 12,000,000 cubic feet due to the purchase of refinery gas for enrichment purposes from a nearby oil refinery. In 1943, the company sold 26,406,403,000 cubic feet of gas for all purposes through its distribution system consisting of approximately 2,243 miles of mains and over 329,000 services, and at the end of that year it had 851,459 meters, of which 777,454 were in active service.

Present Outstanding Securities

Capital stock

The company has always had one class of capital stock—common stock. The original certificate of incorporation authorized the company to issue 150,000 shares of $100 par value of common stock, and all these shares were issued in 1895 at a stated value of $15,000,000 in part payment for the property, rights, privileges, and franchises acquired from seven operating gas companies. On December 30, 1903, the Articles of Incorporation were amended and the authorized shares increased to 200,000, each having a par value of $100. Between 1908 and 1915, the company exchanged 30,000 shares of common stock for $3,000,000 principal amount of 6 per cent convertible debentures that had been issued and outstanding since March 1, 1904. These exchanges increased the outstanding common stock to 180,000 shares with a par value of $18,000,000.

No additional shares of common stock were issued until 1924. On February 25th of that year, the certificate of incorporation was again amended authorizing the company to issue 600,000 shares of no par common stock with a stated value of $50 per share. At the same time, the 180,000 shares of outstanding stock were exchanged for 360,000 shares of new stock, the stated value remaining unchanged at $18,000,000. A further amendment to the charter on December 3, 1925, increased the authorized shares of no par common stock to 1,000,000 shares.

Between November 1, 1924 and 1935, the company continued to exchange common stock for debentures, and during this period issued 385,364 shares of stock in exchange for $19,268,200 principal amount of 7 per cent and 5½ per cent convertible debenture bonds from which the company had originally received an equivalent amount of cash. These issues increased the outstanding common stock to 745,364 shares each having a stated value of $50, or an aggregate of $37,268,200, both of which remained unchanged to October 31, 1941.

In order to place its accounts on a sound basis and provide for overstatements in assets and deficiencies in liabilities, the company reduced the stated value of its common stock as of October 31, 1941, from $50 to $40 per share, thereby creating a capital surplus of $7,453,640 (Case 10724).

In creating this capital surplus and using it for the purposes for which it was designed, the stated value of the common stock was reduced to $29,814,560, the amount now appearing on the company's balance sheet (see Table 1 herein).

During the 5-year period ended December 31, 1943, the company paid dividends on this common stock of 50 cents per share in each of the years 1939, 1942, and 1943. In 1940 they were at the rate of 75 cents per share but in 1941 no dividends were declared or paid.

For some time prior to 1944 nearly 24 per cent of the outstanding shares of common stock of the company were owned by the Koppers interests. This corporate relationship raised many controversial questions as to the reasonableness of the price involved in the many transactions that took place between the gas company and the Koppers Company and affiliates in which the interests of the company's customers were involved. However, this problem no longer exists since the Koppers Company on March 28, 1944, sold its entire holdings in the gas company's common stock. As a result of this sale, the largest holding of record of common stock by any one person amounts to less than 5 per cent of the outstanding shares. Furthermore, the sale of this stock by the Koppers Company removes the Brooklyn Union from jurisdiction of the Securities and Exchange Commission in that it is neither a subsidiary company of a specified holding company nor an affiliate of a specified holding company under the Public Utility Act of 1935.

Funded debt

The outstanding funded debt on May 31, 1944, which the company proposes to refinance totals $48,000,000 (see Table 1 here). It consists of bonds and debentures as follows:

First consolidated mortgage 5 per cent gold bonds, due May 1, 1945	$14,000,000
First lien and refunding mortgage gold bonds	
Series A, 6 per cent, due May 1, 1947	6,000,000
Series B, 5 per cent, due May 1, 1957	10,000,000
Twenty-year 5 per cent debenture bonds, due June 1, 1950	18,000,000
Total	$48,000,000

The first consolidated mortgage 5 per cent gold bonds are secured by a mortgage dated September 16, 1895, between the Brooklyn Union Gas Company and the New York Guaranty and Indemnity Company, now Guaranty Trust Company of New York, as trustee, which covers all the property the company owned at the effective date of the instrument or acquired thereafter. The indenture provided for an original issuance of $15,000,000 principal amount of these bonds of which the company actually issued $14,736,000 in part payment of the property, rights, franchises, and privileges acquired on November 4, 1895, from seven gas operating companies. In 1942, the company retired $736,000 principal amount of these bonds leaving $14,000,000 outstanding at the present time.

The first consolidated mortgage 5 per cent gold bonds are noncallable and do not mature until May 1, 1945. As a part of the refunding plan, the company will deposit with the trustee of the mortgage on August 1, 1944, an amount sufficient to pay

the principal and interest on such bonds and thereby provide in advance for the satisfaction of the first consolidated mortgage. The funds required for this purpose will amount to $14,700,000 of which $175,000 constitutes the accrued but unpaid interest on the bonds to August 1, 1944, and $525,000 is for interest from August 1, 1944 to May 1, 1945.

The outstanding first lien and refunding mortgage gold bonds totaling $16,000,000 consist of $6,000,000 series A, 6 per cent bonds due May 1, 1947, and $10,000,000 series B, 5 per cent bonds due May 1, 1957. These bonds are secured by a mortgage indenture dated May 1, 1922, between the Brooklyn Union Gas Company and the National City Bank of New York, as trustee, which originally authorized the series A, 6 per cent bonds and subsequent series, and under which the series B, 5 per cent bonds were issued. The mortgage covers all the property, rights, privileges, and franchises of the company owned on the effective date of the instrument or acquired thereafter, subject to the prior lien of the first consolidated mortgage.

The series A, 6 per cent bonds are noncallable and do not mature until May 1, 1947. In accordance with the terms of the mortgage indenture and deed of trust covering the new issue of $30,000,000 principal amount of general mortgage bonds, the company will deposit $6,000,000 principal amount of 1¼ per cent treasury notes with the trustee of that mortgage to provide funds in advance for the payment of those bonds at maturity. The company is not required to deposit the interest on these bonds, but will pay such interest out of its general funds. The first lien and refunding mortgage covering this series, as well as the series B, 5 per cent bonds, will be canceled and satisfied on or before May 1, 1947.

The series B, 5 per cent, first lien and refunding mortgage gold bonds are redeemable at any time in whole or in part on the payment of principal, accrued interest, and a redemption premium. The company proposes to redeem this series of bonds on November 1, 1944, and to accomplish this purpose will deposit $10,550,000 in trust on August 1, 1944. Of this amount, $125,000 constitutes the accrued but unpaid interest on these bonds to August 1, 1944, $125,000 covers the interest from August 1, 1944 to November 1, 1944, and $300,000 is for the redemption premium.

Should the issuance of the securities herein requested be authorized by the Commission and the payment at maturity of the series A, 6 per cent bonds as well as the redemption of the series B, 5 per cent bonds be accomplished, the company proposes to charge off against surplus the redemption premium relating to the series B bonds of $300,000 and the unamortized debt discount and expense and unamortized premium on both series of bonds aggregating $294,986.76 as of August 1, 1944.

The outstanding 20-year 5 per cent debenture bonds in a principal amount of $18,000,000 were issued June 1, 1930, under an indenture between the company and the City Bank Farmers Trust Company, as trustee. These debentures are also callable at any time in whole or in part on payment

of principal, accrued interest, and a redemption premium. The company proposes to call these debentures for redemption on or about September 1, 1944 and to accomplish this purpose it will deposit in trust $18,585,000. Of this amount $360,000 covers the required redemption premium, $150,000 is for accrued but unpaid interest to August 1, 1944, and $75,000 is for interest from August 1, 1944, to September 1, 1944.

As in the case of the first lien and refunding mortgage gold bonds, the company proposes to charge off against surplus the redemption premium of $360,000 and the unamortized debt discount and expense relating to these bonds of $9,784.81 at August 1, 1944.

In addition to the foregoing, there is held as collateral by the trustee under the indenture securing the first lien and refunding mortgage bonds, $2,472,000 principal amount of first mortgage bonds issued by four predecessor companies of the Brooklyn Union Gas Company. In each instance, the amount of bonds pledged represents the entire amount issued and outstanding and each issue is secured by a mortgage indenture dated May 1, 1922, between the various companies and the National City Bank of New York, as trustee. These mortgage indentures will cease to be an encumbrance on the property from and after May 1, 1947.

Balance Sheet

Unlike most utility companies in New York state who file applications for authority to issue new securities, the petition of Brooklyn Union Gas Company in the instant proceeding can be passed upon and disposed of with a minimum amount of delay. This is because the accounts of the company are on a sound basis and it is unnecessary to make an extensive examination to determine whether the authorization of the securities should be conditioned in any respect.

As a result of a thorough examination by the staff of the Commission the records and accounts of the company were revised as of October 1, 1941 (Case 9425) to meet all requirements of the uniform system of accounts. The property accounts were made to represent original cost, the deficiency in the depreciation reserve made up, and other reserves created for the impairment in the investment in nonoperating property. To accomplish these results, the company wrote down the stated value of its common stock and created a capital surplus of $7,453,640, all of which, except $682,217.76, was used along with the earned surplus to place the accounts on a sound basis.

According to the company's balance sheet at May 31, 1944, set forth in Table 1 herein, the original cost of the used and useful property in the service of the public at that date was $93,000,000. Although this amount includes some property that is partially used in the service of the public, it does not include any of the objectionable elements usually found in utility properties of this size. The original costs reflected by this balance were based on the books and records of the present operating company or its predecessors, and do not include expenditures that were not actually capitalized. They do not contain any hypothetical or unsupported over-

heads or property that is not actually in existence. Although the property changes since October 31, 1941, have not been examined by the Commission staff, the amount involved is not large enough to have any appreciable bearing on the findings in this proceeding.

Against this property, the company has a depreciation reserve amounting to about $25,800,000, equivalent to nearly 26 per cent of the cost. This balance represents the actual depreciation existing in the property as determined by the engineers of the Commission and of the company as of October 31, 1941, and to which the accruing depreciation is currently added on a sound and systematic basis.

Table 1. Balance Sheet, May 31, 1944

Assets and Other Debits	
Gas plant in service	$92,992,749.65
Construction work in progress	
Gas plant held for future use	121,709.58
Total utility plant	$93,114,459.23
Other physical property	$3,130,786.44
Other investments	537,485.08
Total investment and fund accounts	$3,668,271.52
Cash	$8,449,799.27
Special deposits	227,974.99
Working funds	22,500.00
Temporary cash investments	5,506,367.19
Notes receivable, accounts receivable, interest and dividends receivable, and rents receivable	3,226,159.31
Accrued utility revenues	2,205,615.32
Materials and supplies	1,694,019.13
Prepayments	335,385.31
Total current and accrued assets	$21,667,820.52
Unamortized debt discount and expense	$322,709.41
Clearing accounts, retirement work in progress, and other deferred debits	148,826.88
Total deferred debits	$471,536.29
Total	$118,922,087.56

Liabilities and Other Credits	
Common capital stock	$29,814,560.00
Bonds	$48,000,000.00
Accounts payable	$1,148,626.87
Dividends declared	a
Matured long-term debt	a
Matured interest	151,238.50
Customers' deposits	373,521.42
Taxes accrued	2,164,444.65
Interest accrued	595,067.05
Other current and accrued liabilities	a 28,708.26
Total current and accrued liabilities	$4,461,606.75
Unamortized premium on debt	$14,000.00
Customers' advances for construction	11,723.65
Other deferred credits	301,660.10
Total deferred credits	$327,383.75
Reserve for depreciation of gas plant	$25,800,021.27
Reserve for depreciation and amortization of other property	1,554,159.14
Reserve for uncollectible accounts	207,536.66
Injuries and damages reserve	468,113.08
Employees' provident reserve	2,556,436.67
Other reserves	133,672.97
Total reserves	$30,719,939.79
Contributions in aid of construction	$1,167,123.70
Unearned surplus	$1,077,436.78
Earned surplus	3,354,036.79
Total surplus	$4,431,473.57
Total	$118,922,087.56

(a) These three accounts not shown separately for May 31, 1944.

The company has investments in nonoperating property of slightly over $3,100,000. Although such investments are carried at the book cost, a reserve of over $1,550,000 has been provided to cover any impairment that might exist in this balance.

The current and accrued assets aggregate $21,667,820.52. They represent assets of real value when consideration is given to the applicable reserves shown on the liability side

of the balance sheet, and are nearly five times the amount of the current and accrued liabilities at the same date, an indication of a strong working capital position.

The total of other deferred debits exceeds slightly other deferred credits. There are, however, no questionable items included in the respective balances for either such assets or liabilities.

The earned surplus of the company amounted to $3,354,036.79 on May 31, 1944, and the unearned surplus was $1,077,436.78, or a total of $4,431,473.57. The increase in unearned surplus from $682,217.76, the amount resulting from the revision in the stated value of the company's common stock, to the balance shown in Table 1 (*supra*) is due to two transactions. In one the company received $125,399.38 in the settlement of a stockholders' suit which is credited to this account in 1943. The other relates to an adjustment of $269,819.64 for Federal income taxes covering the period from January 1, 1937, to October 31, 1941, which was also entered in this account in 1943.

Proposed Funded Debt

To refinance its entire outstanding debt, the company proposes to issue securities as follows:

	Principal Amount	Premium	Proceeds
General mortgage sinking-fund bond, 3¾ per cent series due August 1, 1969	$30,000,000	$300,000	$30,300,000
Sinking-fund debentures, 25-year, 4¼ per cent due August 1, 1969	12,000,000	120,000	12,120,000
Total	$42,000,000	$420,000	$42,420,000

The net proceeds from the sale of the foregoing securities after deducting estimated expenses of about $542,000 together with about $8,000,000 of the company's general funds will be applied in the manner previously explained for the payment of the presently outstanding debt as follows:

	Principal	Interest To August 1, 1944	Interest Subsequent to August 1, 1944	Premium	Total
First consolidated mortgage 5 per cent gold bonds, due May 1, 1945	$14,000,000	$175,000	$525,000	.....	$14,700,000
First lien and refunding mortgage gold bonds Series A, 6 per cent, due May 1, 1947	6,000,000	.....	.....	.....	6,000,000
Series B, 5 per cent, due May 1, 1957	10,000,000	125,000	125,000	$300,000	10,550,000
Twenty-year debentures, 5 per cent due June 1, 1950	18,000,000	150,000	75,000	360,000	18,585,000
Total	$48,000,000	$450,000	$725,000	$660,000	$49,835,000

Proposed General Mortgage Sinking-fund Bonds

The company proposes to issue $30,000,000 principal amount of general mortgage sinking-fund bonds, 3¾ per cent series due August 1, 1969 to be dated as of August 1, 1944, and to mature August 1, 1969, with interest payable semiannually on the first day of February and August. After all existing mortgage indentures have been satisfied and discharged of record, these bonds will be known as first mortgage bonds. The mortgage indenture securing the first consolidated mortgage 5 per cent 50-year gold bonds will be satisfied and cease to be an encumbrance on the property from and after May 1, 1945. Other mortgage indentures securing the first lien and refunding mortgage gold bonds and the first mortgage gold bonds of four predecessor companies will cease to be encumbrances on the property on and after May 1, 1947.

These bonds are the initial series authorized under a proposed new indenture of mortgage and deed of trust. The company submitted proof copies of this instrument, not yet executed, from which the following summary of the pertinent provisions contained therein has been taken.

The proposed indenture is to be dated August 1, 1944, to secure an unlimited principal amount of general mortgage bonds issuable in one or more series and is to be a lien on all the property of the company now owned or hereafter acquired, subject to prior liens, and excepting only securities, cash, receivables, merchandise, gas in process of manufacture or delivery, office furniture, automobiles and trucks, materials and supplies, and certain nonoperating property.

Among the numerous provisions set forth in the indenture, there are three methods provided under which these bonds may be redeemed in the future: (1) at option of company, (2) through the operation of a sinking fund, and (3) through the operation of a replacement fund. In addition, the indenture contains limitations as to the payment of dividends on the company's common stock so long as any of these bonds are outstanding; permits the issuance of other series of bonds to the extent of 70 per cent of the net bondable additions as determined in accordance with certain requirements contained therein; requires the company to maintain the property in good condition, repair, and working order; and stipulates that all property of an insurable nature will be insured against loss or damage by fire and other causes.

Under the terms of the mortgage indenture the bonds may be redeemed at the option of the company in whole or in part at any time on not less than thirty days' notice and upon payment of principal, accrued interest, and applicable redemption premium. A summary of the percentages of the principal amount used in determining the redemption premiums is as follows:

On or before August 1	Percentage
1945	5¼
1946	5⅛
1947	5⅛
1948	5⅛
1949	5
1950	4⅞
1951	4⅞
1952	4⅞
1953	4¾

On or before August 1	Percentage
1954	4
1955	3½
1956	3⅜
1957	3⅜
1958	3¼
1959	3
1960	2¾
1961	2½
1962	2¼
1963	2
1964	1½
1965	1
1966	¾
1967	½
1968	¼
1969	0

These bonds are also redeemable through the operation of a sinking fund at premiums that are considerably less than the premiums that will be paid if the bonds are redeemed at the option of the company. The percentages of the principal amount of the bonds used in determining the redemption prices under the sinking-fund provisions are as follows:

On or before August 1	Percentage
1945	1.000
1946	.9253
1947	.8991
1948	.8720
1949	.8439
1950	.8147
1951	.7844
1952	.7531
1953	.7205
1954	.6867
1955	.6517
1956	.6154
1957	.5777
1958	.5386
1959	.4981
1960	.4561
1961	.4124
1962	.3672
1963	.3204
1964	.2717
1965	.2213
1966	.1690
1967	.1147
1968	.0584
1969	0

For the purpose of providing a sinking fund for the retirement of these bonds, the company agrees to pay the trustee on July 31st of each year funds sufficient to redeem the principal amount including interest thereon and applicable redemption premiums as follows:

1945 to 1947	$380,000
1948 to 1966	$480,000
1967 to 1969	$580,000

The company is also permitted to satisfy any sinking-fund payment in whole or in part by delivering general mortgage bonds heretofore issued and outstanding under the terms of this indenture to the trustee. The operation of this sinking fund under the terms outlined will have retired $12,000,000 principal amount of these bonds by August 1, 1969, when they become due.

Another provision of the mortgage indenture requires the company to pay the trustee on or before May 1st of each year commencing in 1945 the amount of its depreciation accruals upon the property actually charged to operating expenses during the preceding calendar year, or an amount equivalent to $1,500,000 plus or minus 1.85 per cent of the cost of net additions to the property from January 1, 1944, up to December 31 of the next preceding year, whichever is greater. In lieu of all or any part of the cash to be paid over to the trustee under this provision, the company will be entitled to obtain credit by the delivery of certificates and other necessary instruments required for the authentication of new bonds on the basis of property additions, or by the delivery of bonds heretofore issued and outstanding under the terms of this mortgage.

The cash held by the trustee in the replacement fund may be withdrawn

for property additions or be applied from time to time to the redemption of outstanding bonds as requested by the company; in the latter event, the company is required to furnish from its own funds an amount equal to the accrued interest and applicable redemption premiums. It is optional on the part of the company whether cash funds will be used for the redemption of bonds until the balance exceeds $7,500,000 in cash and/or market value of securities when it becomes mandatory to use the excess above that figure for redemption purposes. When bonds are reduced through the operation of the replacement fund, the premiums are the same as those prevailing under the operation of the sinking fund.

Although the bonds due in 1969 will be the only bonds outstanding under the new mortgage and will be a closed series, additional bonds of other series equal in rank as to the lien of the 1969 bonds may be issued under the mortgage in principal amount equivalent to (1) 70 per cent of the cost or fair value, whichever is less, of net property additions made after December 31, 1943, and not heretofore bonded; (2) the principal amount of bonds issued under the new mortgage and retired other than through the sinking fund or through the replacement fund and not heretofore bonded; and (3) the amount of cash deposited with the trustee for such purpose. The indenture provides, however, that new bonds can only be issued in connection with items 1 and 3 if the net earnings available for interest for twelve consecutive calendar months immediately preceding the date of application are at least two and one-half times the annual interest charges on all indebtedness of the company. With certain exceptions no earnings test is required for the issuance of new bonds on account of bonds retired as provided for in item 2.

The indenture further provides that so long as any of the 1969 series are outstanding the indebtedness of the company will not exceed $47,000,000 less the aggregate principal amount of bonds delivered to the trustee, redeemed or otherwise retired through the operation of the replacement fund or the sinking fund, plus or minus 70 per cent of the change after December 31, 1943, in the book value of company's property (gas plant in service) less depreciation reserve and plus or minus 50 per cent of the change in capital, surplus, and unearned surplus after December 31, 1943.

The indenture prohibits the company from declaring dividends on its common stock, other than dividends payable solely in stock of the company, unless the amount of $200,000, plus the net income of the company for the period from December 31, 1943 to and including the date of the declaration or authorization of the proposed dividend, is greater than the sum of the aggregate amount of cash paid and other property distributed since December 31, 1943, in respect of such dividends plus the aggregate amount of liabilities which have been incurred by the company since the same date in respect of dividend payments plus the aggregate amount of sinking fund obligations paid, satisfied, or accrued pursuant to the new mortgage.

The company agrees that it will make all needful and proper repairs, replacements, additions, betterments, and improvements so that the efficiency of its property will be maintained and that it will retire all property which has permanently ceased to be used and useful in the rendition of service. Under the indenture the holders of at least 25 per cent of principal amount of bonds outstanding can request the appointment of an independent engineer to make an inspection of the mortgage property not more often than once every five years.

The mortgage indenture provides also that the company and the trustee may enter into a supplemental indenture for the purpose of changing or eliminating provisions of the present mortgage if approved by holders of at least 66⅔ per cent in principal amount of outstanding bonds of the series affected by such modifications. It is provided that no such modification shall extend the fixed maturity of the present bonds, reduce the rate or extend the time of payment of interest thereon, reduce the amount of principal or reduce any premium payable on redemption without the consent of the holder of each bond so affected.

Purchase agreements

The company has entered into agreements for the private sale of the proposed general mortgage sinking-fund bonds to sixteen insurance companies and other organizations as follows:

The Equitable Life Assurance Society of the United States	$5,000,000
The Prudential Insurance Company of America	5,000,000
Metropolitan Life Insurance Company	4,000,000
The Mutual Life Insurance Company of New York	3,000,000
The Northwestern Mutual Life Insurance Company	3,000,000
Aetna Life Insurance Company	2,000,000
The Connecticut Mutual Life Insurance Company	1,500,000
New England Mutual Life Insurance Company	1,500,000
The Travelers Insurance Company	1,000,000
Provident Mutual Life Insurance Company	1,000,000
Sun Life Assurance Company of Canada	1,000,000
State Mutual Life Assurance Company of Worcester	500,000
Teachers Insurance & Annuity Association of America	500,000
Wilmington Savings Fund Society	500,000
Modern Woodmen of America	250,000
President and Fellows of Harvard College	250,000
Total	$30,000,000

The estimated purchase price is 101 per cent of par plus accrued interest to the closing date which will be fixed before August 15, 1944, on five days' written notice.

The proposed bonds are to be purchased for investment and not for distribution or sale, but of course their future disposition would be subject to the control of the purchasers. The proposed bonds are not to be registered under the Federal Securities Act of 1933 but the company has agreed upon request to use its best efforts to register the bonds under the Securities Act or some similar Federal statute if and to the extent such registration shall be lawfully possible.

The purchase contracts are subject to various representations and conditions, among which are that the purchasers receive favorable opinions from company counsel, that all reasonable charges and disbursements occasioned are to be paid by the company, and that the Commission will give its consent to the issuance of the proposed bonds under an order acceptable to the company and that on the closing date the company will deposit cash or obligations equivalent to $49,835,000 in the manner previously outlined herein.

The obligation of the institutions to purchase and pay for the bonds is subject, however, to the company prior to or simultaneously with the sale of $30,000,000 principal amount of general mortgage bonds selling $12,000,000 principal amount of 25-year 4¼ per cent sinking-fund debentures due August 1, 1969, under an indenture dated August 1, 1944 to net the company not less than $12,000,000 and accrued interest. Since these agreements were accepted, the company arranged to sell these debentures at a price 101 per cent of par and accrued interest.

Proposed 25-Year 4¼ Per Cent Sinking-fund Debentures

As a condition to the private sale of $30,000,000 principal amount of general mortgage sinking-fund bonds, the company proposed originally to issue $12,000,000 principal amount of "25-year 4¼ per cent sinking-fund debentures" to be dated August 1, 1944, and to mature August 1, 1969, with interest payable semiannually on the first day of February and August.

These debentures would be the initial series under an indenture which the company proposes to execute with the Guaranty Trust Company of New York, as trustee. The indenture, which is to be dated August 1, 1944, limits the principal amount of debentures to $12,000,000 except that additional debentures may be issued in substitution for lost, stolen, or destroyed debentures. The debentures are not secured by any lien and the indenture does not limit the amount of other securities which the company may issue from time to time.

Among the numerous provisions set forth in the indenture there are two methods provided under which the debentures may be redeemed in the future: (1) at the option of the company and (2) through the operation of a sinking fund. In addition, the indenture provides for limitations as to the payment of dividends on the company's common stock so long as any of the debentures are outstanding similar to the limitation outlined in the mortgage indenture and deed of trust.

Under the provisions of the indenture the debentures would be redeemed at the option of the company in whole or in part at any time on not less than thirty days' notice upon the payment of principal, accrued interest, and applicable redemption premiums. The redemption prices under this provision, expressed in percentages of principal amount, are as follows:

On or before August 1	Percentage
1945	5¼
1946	5⅛
1947	5⅛
1948	5
1949	4¾
1950	4½
1951	4¼

On or before August 1	Percentage
1952	4
1953	3¾
1954	3½
1955	3¼
1956	3
1957	2¾
1958	2½
1959	2¼
1960	2
1961	1¾
1962	1½
1963	1¼
1964	1
1965	¾
1966	½
1967	⅜
1968	¼
1969	0

The debentures are also redeemable in part on August 1, 1945, or on any August 1st thereafter through the operation of a sinking fund at premiums that are somewhat less than the premiums that will be paid if the bonds were redeemed at the option of the company. The percentages of the principal amount of the debentures used in determining the redemption prices under the sinking-fund provisions are as follows:

On or before August 1	Percentage
1945	2⅞
1947	2⅝
1949	2½
1950	2⅜
1952	2¼
1953	2⅛
1954	2
1956	1⅞
1957	1¾
1958	1⅝
1959	1½
1960	1⅜
1961	1¼
1962	1⅛
1963	1
1964	⅞
1965	¾
1966	⅝
1967	½
1968	⅜
1969	0

For the purpose of providing a sinking fund for retirement of the debentures, the company agreed that it would pay to the trustee on or before July 31, 1945, and each year thereafter to and including July 31, 1968, an amount sufficient to redeem $150,000 principal amount of debentures at the sinking-fund redemption price (exclusive of accrued interest) prevailing on August 1st next succeeding such sinking-fund payment. The company also agreed to pay the trustee on or before July 31, 1946, and each year thereafter to and including July 31, 1968, an amount equal to 50 per cent of the balance of net income of the company available for dividends for the twelve months' period ended on the next preceding December 31st, remaining after deducting (1) the amount of the current sinking-fund payment ($150,000), (2) the current annual sinking-fund payments required to be made within the twelve months' period ended July 31st in respect of all bonds issued under the general mortgage, and (3) the sum of $400,000. It was provided, however, that no sinking-fund payment under this provision should exceed $400,000. At the option of the company sinking-fund payments were to be made in whole or in part in debentures which shall be accepted by the trustee at the sinking-fund redemption price prevailing on August 1st next succeeding such sinking-fund payment.

Under the original proposal of the company, the 25-year 4¼ per cent sinking-fund debentures were to have been sold to a syndicate of underwriters represented by F. S. Moseley & Company. A pro forma copy of an undated agreement (not executed) was submitted at the hearing on July

17th. The agreement indicated a distribution of the $12,000,000 in principal amount of debentures to twenty-eight underwriters in the following amounts:

F. S. Moseley & Co.	$2,500,000
A. G. Becker & Co. Incorporated	300,000
Blyth & Co., Inc.	800,000
Boettcher and Company	100,000
Alex. Brown & Sons	200,000
J. M. Dain & Company	75,000
Dillon, Read & Co.	1,000,000
The First Boston Corporation	800,000
Glore, Forgan & Co.	450,000
Goldman, Sachs & Co.	500,000
Granbery, Marache & Lord	200,000
Wm. P. Harper & Son & Company	75,000
Harris, Hall & Company (Incorporated)	300,000
Hemphill, Noyes & Co.	300,000
Hornblower & Weeks	300,000
Kidder, Peabody & Co.	500,000
W. C. Langley & Co.	300,000
Lee Higginson Corporation	350,000
Carl M. Loeb, Rhoades & Co.	175,000
Mackubin, Legg & Company	225,000
Lawrence M. Marks & Co.	200,000
Merrill Lynch, Pierce, Fenner & Beane	350,000
Paine, Webber, Jackson & Curtis	300,000
Arthur Perry & Co., Incorporated	225,000
Phelps, Fenn & Co.	400,000
Stone & Webster and Blodget, Incorporated	400,000
White, Weld & Co.	500,000
Whiting, Weeks & Stubbs	175,000
Total	$12,000,000

As already stated, the underwriters were to pay the company 101 per cent of par for debentures bearing 4¼ per cent interest. They had agreed that these would be offered to the public at a spread of 1¾ points, which means that the public would pay the underwriters 102¾ per cent of par.

At the close of the hearing upon July 17th, the company had not submitted final copies of the indentures, the price at which the debentures were to be sold to the underwriting syndicate or an affidavit signed by the president of the applicant that "the proposed issue is to be sold at the most advantageous terms available," as required by the rules of the Commission. Upon the 21st of July, the company filed with the Commission a final copy of the indentures and a statement that the price to be received by the company was *expected* to be 101 per cent of par. The underwriting agreement had not at that time been signed and was to have been delivered to the Commission on Monday, July 24th.

Upon the afternoon of the 21st of July, after the proposed price to be paid by the underwriters of 101 had been made public, the company received a letter from Halsey, Stuart & Co., Inc. A copy was filed with the Commission at the same time. This communication reads as follows:

"July 21, 1944

"Mr. Clifford E. Paige,
Chairman of the Board and President
The Brooklyn Union Gas Company
176 Remsen Street
Brooklyn 2, N. Y.

"Dear Sir:

"Referring to our letter to you dated March 15, 1944, and Mr. B. G. Neilson's reply dated March 16, 1944, we were greatly disappointed that you did not give us the opportunity to discuss your proposed financing with you and give us the privilege of expressing our views without obligation to you. We now understand from newspaper and other public sources that the $30,000,000 general mortgage 3¾ per cent bonds due August 1, 1969, have been or are about to be privately placed at a reported price of 101 and accrued interest to the company. We further understand that the company contemplates a public distribution of its $12,000,000 25-year 4¼ per cent deben-

tures, the price to be realized by the company being 101 per cent and accrued interest. We understand the call prices on the debentures have been tentatively set as follows:

"A. Optional call price three points above public offering price with a reduction of $\frac{1}{4}$ of 1 per cent for each year for a period of years and thereafter the reduction to be $\frac{1}{8}$ of 1 per cent for each year provided that in no year shall the redemption price be lower than the sinking-fund redemption price.

"B. Sinking-fund redemption price beginning at the public offering price and reduced $\frac{1}{8}$ of 1 per cent each year with the provision that the initial yield to maturity shall be protected to the next highest $\frac{1}{8}$ of 1 per cent.

"In both cases debentures shall be callable at par in the last year.

"The debentures, we understand, are to have the benefit of a sinking-fund sufficient to retire a fixed amount of $150,000 annually beginning July 31, 1945, and in addition beginning July 31, 1946 and annually thereafter a sum equal to 50 per cent of the net income available for dividends for the preceding calendar year after certain deductions with a maximum of $400,000 annually for the additional sinking fund.

"We assume that in the interest of your stockholders and consumers you are vitally interested in obtaining the best possible terms on your proposed financing. Furthermore, as we have previously indicated to you, we have been interested in the securities of the Brooklyn Union Gas Company and have sold them very widely to our customers. We therefore would like very much to submit a bid to you for the debentures and if you would incur the moderate expense of registering the general mortgage bonds, we also would like to submit a bid for the bonds. Therefore, we now advise you that if you will submit either or both of such issues to open competitive bidding we will at this time guarantee to submit a bid at such open competitive bidding of not less than 100 and accrued interest for the debentures described substantially as above with the exception that the coupon rate shall be 4 per cent instead of $4\frac{1}{4}$ per cent; and for the general mortgage bonds, if registered as stated, we will now guarantee to submit a bid of not less than 100 and accrued interest for $30,000,000 25-year general mortgage bonds with a coupon rate of $3\frac{1}{2}$ per cent; the terms of the mortgage to be mutually satisfactory.

"In our opinion, private sales with cash sinking funds are not in the interests of the issuer over the long term because in effect your company is putting out a serial bond repayable at the full redemption price and will never get any benefit from changed market conditions. While the bonds are outstanding it is very likely there will be a change of interest rates and the bonds, for that reason, might be acquired for sinking-fund purposes at a considerable discount from the redemption price. If the bonds are publicly distributed, the company would be in a position to take full advantage of any such discount but if privately placed would have to pay the full redemption price.

"If you should conclude to adopt a program of inviting competitive bids, we are pleased to offer our services without obligation and with-

out expense to you in connection with the preparation of any necessary documents or papers.

"We are delivering a copy of this letter to Mr. Milo R. Maltbie, Chairman of the New York Public Service Commission.

"Very truly yours,
"Halsey, Stuart & Co., Inc.

"cc. Mr. B. C. Neilson, Vice President
The Brooklyn Union Gas Company
176 Remsen Street
Brooklyn 2, N. Y."

Under date of July 22nd, the Brooklyn Union Gas Company replied as follows:

"July 22, 1944.

"Halsey, Stuart & Co.,
"35 Wall Street,
"New York 5, N. Y.

"Dear Sirs:

"This will acknowledge your communication of July 21, 1944, with respect to the proposed financing of this company which letter was received at approximately 4 P. M. on Friday afternoon, July 21, 1944, at a time when I was out of the office and the contents of the letter were telephoned to me.

"Let me say at the outset that I am fully conscious of my obligation as the president of this company, as I am sure are the other directors, to sell our proposed issue of mortgage bonds and debentures on the most advantageous terms obtainable, and toward this end the executives of our company and its counsel have been devoting their time and energy for many months past.

"This entire refunding plan was submitted to the stockholders on May 17, 1944, and was approved at the stockholders' meeting on June 15, 1944, by vote of 73.6 per cent of the stockholders. Following this meeting, a firm contract with sixteen institutions was made to sell $30,000,000 general mortgage sinking-fund bonds maturing in twenty-five years from August 1, 1944, and bearing interest at the rate of 3¾ per cent per annum, at the price of 101 and accrued interest, subject only to the approval of the New York State Public Service Commission and to the sale of $12,000,000 of 25-year debentures at not less than their principal amount.

"The company cannot at this time submit this issue of $30,000,000 of mortgage bonds to open competitive bidding without violating its contract with these sixteen institutions.

"If we were to attempt to break that contract, we would be subject to litigation and possible damages, apart from the question of business integrity involved and the effect such action would have on the credit of the company.

"On June 29, 1944, we filed our registration statement with respect to the $12,000,000 of debentures with the Securities and Exchange Commission; on July 19, 1944, we filed our first amendment; the registration statement and the first amendment have been cleared with the Securities and Exchange Commission, apart from price amendments, and the final amendment setting forth the price and the sinking fund and voluntary redemption prices has been printed and is to be filed on Monday, July 24, 1944.

"Subject to the approval of the New York State Public Service Com-

mission at its meeting on July 25, 1944, the debentures are to be publicly offered on Wednesday, July 26, 1944, and the closing with respect to the bonds and the debentures is to be held on August 1, 1944; the redemption notices for the issues to be called have all been prepared and cleared on this basis and we are prepared to notify the institutions on July 26th that August 1st is the closing date.

"For your information we enclose a copy of the contract which we are signing with F. S. Moseley & Co. and the other several underwriters on Monday, July 24, 1944, providing for the issuance and sale of the $12,000,000 25-year debentures, bearing interest at the rate of 4¼ per cent per annum at the price of 101 and accrued interest to the company.

"Hearings have been held on the refunding plan before the New York State Public Service Commission on July 7, 1944, and July 17, 1944; printing orders have been given for the new mortgage, the bonds to be issued thereunder, the debenture indenture and the debentures to be issued thereunder.

"As stated above, it is impossible to terminate our contract for the sale of the mortgage bonds and to submit this issue to open competitive bidding at this time, as you request.

"At this late date it is equally impossible to terminate our arrangements with F. S. Moseley & Co. and the other several underwriters, to amend the registration statement so as to provide for competitive bidding for the debentures, circulate the bids, give the proposed underwriters an opportunity of examining the registration statement, debenture indenture, contracts, etc., have the bidding completed, make the award, file the necessary amendments to the registration statement and have them become effective, obtain the necessary approval of the New York State Public Service Commission (which, as you know, meets on scheduled dates), permit the underwriters to make public offering of the debentures, and to obtain payment therefor at the latest by August 14, 1944 (which is two weeks later than our contemplated schedule). Under § 3 of the contract with the institutions, we must give them five days' notice of the delivery date, which notice must be given not later than August 9, 1944, and which we intend to give on July 26, 1944. If we do not obtain payment for the debentures by the delivery date fixed with the institutions for the closing with respect to the mortgage bonds, our firm contract to sell $30,000,000 of the new mortgage bonds to the sixteen institutions lapses by its terms, which would leave us without any firm commitment in this respect at a time when world conditions are in a chaotic state.

"We assume that you would not have made your statement of intent to bid for our mortgage bonds and for our debentures unless you were thoroughly familiar with this company's affairs and that you do not need to make any further investigation of it or its securities. While we believe that the present advantageous terms on which this company can market its securities are largely due to the tremendous amount of constructive work which has been done toward the formulating of a refunding plan

and the placing of this company's credit on a sound basis within the past six monhs, nevertheless, despite this last minute offer, I am prepared to submit to our directors on Monday, July 24, 1944, an offer from you (which must be firm in our hands not later than 12 o'clock, eastern war time, Monday, July 24, 1944), to buy $12,000,000 of the above-mentioned debentures on terms and conditions set forth in the contract to be entered with F. S. Moseley & Co. and the other several underwriters named therein except that the coupon rate on the debentures will be 4 per cent per annum, the price to be paid by you on August 1, 1944, is to be their principal amount and the sinking fund and redemption prices are to be calculated on the same formula in relation to your proposed public offering price as the redemption prices for the sinking fund and on voluntary redemption were calculated for the 4¼s.

"We should also receive the name of your counsel and satisfactory assurances that you will be able to make your offering and complete your work in time to carry out the refunding plan on August 1, 1944, as scheduled.

"I am also enclosing for your information a copy of the proposed debenture indenture with the Guaranty Trust Company of New York, a copy of the registration statement in form as filed with the Securities and Exchange Commission on June 29, 1944, a copy of the first amendment, a copy of the amendment proposed to be filed on July 24, 1944, a copy of the petition to the New York State Public Service Commission filed on June 19, 1944, and a copy of the proxy statement mailed to our stockholders on May 17, 1944.

"I have called a special meeting of the board of directors, of the company to be held in the forenoon on Monday, July 24, 1944, to consider and take action upon these matters. If we receive your firm offer by the above mentioned hour and date, your proposed offering price, discounts to dealers, names of underwriters, answers to the usual questionnaires about the holdings of the company's securities in relation to the company and to the trustee under the debenture indenture, the name of the counsel you wish to act for you and the other data required in order to complete the papers to be filed under the Securities Act of 1933 and the Trust Indenture Act of 1939, subject to the approval of our board we will have available for signing the necessary contracts, will make the necessary amendments in the debenture indenture and the form of debenture, and will undertake to prepare and file with the Securities and Exchange Commission by Tuesday morning, July 25, 1944, an amendment to the registration statement, giving effect to the above changes, so that, assuming favorable approval of the refunding plan by the New York State Public Service Commission at its meeting in Albany on July 25, 1944, and the registration statement becoming effective, you will be free to make public offering of the debentures on Wednesday, July 26, 1944, and so that you can take up and pay for the debentures on August 1, 1944.

"If we do not receive your firm offer and the necessary data by 12 o'clock noon, eastern war time, Mon-

day, July 24, 1944, at my office, 176 Remsen Street, Brooklyn 2, New York, for immediate consideration by our board of directors, I shall recommend to our board of directors that the company proceed with the financing of the new mortgage bonds and of the debentures as proposed in the contracts already entered into with the sixteen institutions and to be entered into with F. S. Moseley & Co. and the other several underwriters and in the petitions and filings already made with the Public Service Commission. And I shall urge the Public Service Commission to give its approval to such financing July 25, 1944, on the ground that these are the most advantageous terms on which the proposed financing can be carried out, and that the company should not at this time have its financing plans put in jeopardy.

"In order that you might be fully informed, we telephoned Mr. Niver of your office at 11:20 A. M. on Saturday, July 22, 1944, and made arrangements with Mr. Niver so that he would receive this letter on the afternoon of Saturday, July 22, 1944.

"We are sending a copy of this letter to the Honorable Milo R. Maltbie, Chairman of the New York State Public Service Commission and are requesting him to call a hearing at the New York office of the Commission at 2 P. M. on Monday, July 24, 1944, in order that this entire matter may be considered.

"While we realize that you must act upon this matter promptly, this necessity has been occasioned by your waiting until late in the afternoon of Friday, July 21, 1944, to send your letter with respect to our company's proposed financing.

"I am sending you the original and three copies of this letter. Will you please acknowledge the receipt thereof by signing one of the enclosed duplicates thereof and noting the time of receipt thereon.

"Very truly yours,
"THE BROOKLYN UNION GAS COMPANY
"By (signed) C. E. PAIGE
"President"

As a result of this exchange of letters, the company filed an amended petition with the Commission on the morning of July 24, 1944, requesting that a hearing on the matters under discussion in the communications be held that afternoon. This request was granted, and after a conference between the representatives of the company and the representatives of Halsey, Stuart and Company, called by the chairman, counsel for the company stated on the record that the company had decided to complete its contract with the insurance companies and other institutions for the sale of $30,000,000 principal amount of general mortgage 3¾ per cent sinking-fund bonds but had agreed to accept the offer of Halsey, Stuart and Company to purchase $12,000,000 principal amount of 25-year sinking-fund debentures due August 1, 1969, upon terms hereinafter set forth. He further stated that an agreement would be entered into that afternoon outlining the terms and conditions agreeable to both parties to accomplish this program, and that a copy of the agreement would be filed immediately with the Commission.

According to the terms of this

agreement, which was received by the Commission on the morning of July 25, 1944, the company now proposes to issue $12,000,000 principal amount of 25-year 4 per cent sinking-fund debentures to be dated August 1, 1944, and due August 1, 1969. These debentures are to be issued under the terms of the indenture dated August 1, 1944, between the company and the Guaranty Trust Company of New York, as trustee, except as to the coupon rate and the redemption prices. Halsey, Stuart and Company agrees to purchase these debentures at par and accrued interest, if any, to the date of delivery which is fixed in the agreement as August 1, 1944.

Under the terms of the agreement, Halsey, Stuart and Company does not propose to sell such debentures but will hold them as their own investment until they are offered at competitive bidding. At the time of such open competitive bidding, Halsey, Stuart and Company will submit a firm bid of *at least* 100 and accrued interest from August 1, 1944. If the Brooklyn Union Gas Company receives a better bid, Halsey, Stuart and Company agrees to turn the debentures in for cancellation at 100, or to retain the debentures if they are the successful bidders and remit the difference between $12,000,000 and accrued interest at 4 per cent from August 1, 1944, to the delivery date and the price to be paid by the successful bidder at such open competitive bidding.

Among other provisions, the agreement provides that the Brooklyn Union Gas Company at its own expense will file further amendments to its registration statement with the Securities and Exchange Commission before such statement becomes effective, and a prospectus in order that the debentures may be let at competitive bidding and permit the successful bidder to make a public offering. The company also agrees to use its best efforts to qualify the debentures for sale under the securities laws of such states as the successful bidder may designate, to make application to list the debentures on the New York Stock Exchange and to register the debentures under the Securities Act of 1934.

The provisions of the indenture with the Guaranty Trust Company of New York, as trustee, covering the redemption of the debentures are changed only in one respect. The redemption prices, expressed in percentages of principal amount, under which the debentures are redeemable at the option of the company, have been modified and are as follows:

On or before August 1	Percentage
1945	4⅜
1946	4¼
1947	4⅛
1948	4⅛
1949	4
1950	3⅞
1951	3⅞
1952	3⅞
1953	3½
1954	3
1955	2⅞
1956	2⅝
1957	2½
1958	2¼
1959	2⅛
1960	1⅞
1961	1⅝
1962	1½
1963	1⅜
1964	1⅛
1965	1
1966	¾
1967	½
1968	¼
1969	0

The percentages of principal amount

of the debentures used in determining the redemption prices under the sinking-fund provisions have also been modified and are to be as follows:

On or before Aug. 1, 1947	1¾
Thereafter and on or before Aug. 1, 1950	1½
Thereafter and on or before Aug. 1, 1952	1¼
Thereafter and on or before Aug. 1, 1954	1⅛
Thereafter and on or before Aug. 1, 1956	1
Thereafter and on or before Aug. 1, 1958	⅞
Thereafter and on or before Aug. 1, 1960	¾
Thereafter and on or before Aug. 1, 1961	⅝
Thereafter and on or before Aug. 1, 1963	½
Thereafter and on or before Aug. 1, 1964	⅜
Thereafter and on or before Aug. 1, 1966	¼
Thereafter and on or before Aug. 1, 1967	⅛
Thereafter and on or before Aug. 1, 1968	¼
Thereafter and on or before Aug. 1, 1969	0

This revision in the company's proposed refinancing plan results in a substantial saving. In the first place, the interest rate is reduced from 4¼ per cent to 4 per cent, a saving of ¼ per cent annually, or $30,000. Offsetting this saving to some extent is the premium of $120,000 that the company forgoes by canceling its agreement to sell 4¼ per cent debentures to a syndicate of underwriters represented by F. S. Moseley and Company at 101 per cent of par. If the debentures remained outstanding until maturity, the premium that the company would have received under its original agreement would equate to $4,800 a year, and on this basis the annual interest saving amounts to $25,200. Of course, the operation of the sinking fund would modify these amounts slightly.

The agreement with Halsey, Stuart and Company, dated July 24, 1944, was attached to an affidavit submitted by Mr. C. E. Paige, President of the Brooklyn Union Gas Company. In his affidavit, Mr. Paige alleges that in his opinion the issuance and sale of $30,000,000 principal amount of general mortgage sinking-fund 3¾ per cent bonds to the insurance companies and other institutions, and the issuance and sale of $12,000,000 principal amount of 25-year 4 per cent sinking fund debentures to Halsey, Stuart and Company under the terms of the agreement previously outlined are at the most advantageous terms obtainable.

Interest Saving

On the basis of the original plan of issuing 3¾ per cent general mortgage bonds and 4¼ per cent sinking-fund debentures, Mr. Neilson estimated that the annual gross interest savings to the company would amount to $825,000 in 1945 increasing each year thereafter due to the operation of the fixed sinking-fund payments by $20,625 through 1948 and thereafter by $24,375 through 1957—the last year in which the bonds that are being refunded fall due. These estimates do not give effect to the amortization of debt discount and expense and the amortization of premiums, and do not give consideration to the duplicate interest the company will be required to pay until all the presently outstanding bonds mature. The gross interest saving in each year would be reduced by 40 per cent if the present effective income tax rate continues in the future, and according to Mr. Neilson's estimates, the net interest saving would not equal or exceed the fixed sinking fund payments until 1955. In other words, the company will be required to pay over to the trustees all the savings resulting from its refinancing program until 1955.

The substitution of 4 per cent debentures in accordance with the agree-

ment entered into with Halsey, Stuart and Company will alter Mr. Neilson's estimates. On the basis of the same assumptions, the gross savings will amount to $855,000 in 1945, or $30,000 more than the amount shown by Mr. Neilson. This saving will increase each year through 1948 by $20,250 and by $24,000 through 1955. The net saving will be somewhat more than the amounts computed by Mr. Neilson but will not equal or exceed the fixed sinking-fund payments except in 1947 and 1954; in all other years such payments are slightly higher than the net interest saving under the present proposed refinancing plan.

Proposed Expenses

The company has submitted estimates of proposed expenses in connection with the refunding plan amounting to $542,000. Nearly all of these items (by far a majority) are estimates and do not represent actual expenditures or costs that can now be finally determined. There are very large allowances for attorney's fees, and in addition a fee of $100,000 to F. S. Moseley & Company as agent for the Brooklyn Union Gas Company in negotiating with insurance companies and dealers in securities. In addition, Moseley & Company and other members of the group which were to purchase the debentures were to receive a spread between what they were to pay and the price at which the securities were to be offered to the public of 1¾ points, amounting to a total of $210,000.

In view of the conclusions herein reached, certain of the items listed will naturally not appear in the expenditures finally submitted. However, the Commission does not pass upon the reasonableness of expenses in advance but requires every utility to submit the details and facts regarding the various items. Any amount disallowed by the Commission may not be charged to the cost of the issuance of securities.

Conclusion

[1–3] Although the regulation of the issuance of securities by a gas company has been in operation over thirty-seven years, it may be useful to call attention to certain principles in relation thereto. In the first place, the Commission has no authority to authorize the issuance of securities unless it can certify that the issuance of the bonds and debentures is "reasonably required for the purpose specified in the order" and unless it finds that such issuance is in the public interest. It follows that the Commission has no authority to approve an issue of bonds at an interest rate higher than is required to produce the necessary funds. In other words, if a 3 per cent bond can be sold at a lower net interest rate than a 4 per cent bond, all other things being equal, the Commission is required to withhold its approval of a 4 per cent bond; or if a company proposes to issue bonds in excess of the amount required, approval may not legally be given.

In determining these and other rules in the application of the statutory provision, the Commission not only has the power but the duty to consider the entire plan and all of the provisions connected with the issuance of obligations (in the instant case, bonds and debentures) in order to determine

whether the proposed issue is proper and necessary.

That the company may wisely and advantageously retire the bonds and debentures outstanding at a net saving to the company needs no extended discussion. The plan originally submitted by the company and the proposal of Halsey, Stuart and Company resulting from a publication of the terms of the company's proposal conclusively disposes of any question in this direction, particularly when one considers the large amount of cash which the company has and which could be utilized as the company proposes to retire a considerable amount of the securities outstanding.

Thus we come to the question of whether the company's proposal should be approved as submitted. To anyone familiar with market conditions, a 3¾ per cent interest rate for bonds which will become in a very short time the first lien on the property of the Brooklyn Union Gas Company and a 4¼ per cent interest rate on debentures will at first glance appear to be excessive and not "necessary" in order to produce adequate funds for refunding of the outstanding securities. The principal reason suggested why the proposed rates are not excessive at the proposed issue price of 101 per cent of par to the company is that the Brooklyn Union Gas Company operates an artificial gas plant and that the future of artificial gas is more uncertain than electric undertakings for example.

There are many pros and cons to this question and it might be necessary to enter into their discussion were it not that the company received a communication from Halsey, Stuart and Company quoted above in full guaranteeing to bid *at least* par for the issue of bonds at an interest rate of 3¾ per cent and *at least* par for the debentures at an interest rate of 4 per cent, if the bids are invited through public offering. Thus the gas company has a definite guaranty by a responsible financial house to bid more favorable terms for the bonds and the debentures than the company has proposed, but the gas company is not bound to accept this proposal unless it is the best bid submitted. The letter of Halsey, Stuart and Company states that they will bid *at least* the figure named for each of the issues. In other words, there appears to be no way in which the Brooklyn Union Gas Company can lose by accepting the offer of Halsey, Stuart and Company as compared with its own original proposal. Possibly the gas company may suggest that if its original plan is disapproved, a contract should be entered into by Halsey, Stuart and Company to do what they have offered to do in their letter. There certainly can be no objection to this procedure.

It has been suggested that the Brooklyn Union Gas Company has made a contract with certain insurance companies and others to sell the bonds to them at the price mentioned (3¾ per cent at 101) and that the gas company is not legally free to accept the offer of Halsey, Stuart and Company in relation to the bonds. This may be true, but the Public Service Commission is not in the slightest degree bound to approve the proposal submitted by the company. The so-called contract is not binding upon anyone except the parties involved and, of course, was made with the full

knowledge of all parties that unless the Public Service Commission gives its approval the bonds cannot be issued. No one has even suggested that the Commission is bound to approve the proposal. All have conceded that the Commission is free to approve, to reject, or to approve on conditions. Hence, the question before the Commission is whether the proposal as to the bonds should be approved, rejected, or another plan authorized. The Commission believes that the proposal of Halsey, Stuart and Company both as to the bonds and debentures will result in the flotation of new securities at a lower net cost to the company than the original proposal of the company or the revised proposal. Hence, Halsey, Stuart and Company should be given an immediate opportunity to enter into a firm contract to carry out the terms of their offer of July 21, 1944; the bonds and debentures should be offered for public bidding and then awarded to the highest responsible bidder.

To this end, the Commission refuses its consent to the issuance of the bonds and debentures as originally proposed by the gas company, also to the issuance of the bonds as proposed by the gas company in its amended petition, but will permit the issuance, subject to the usual terms and conditions which the Commission adopts in such cases, of $12,000,000 of 4 per cent debentures to be sold at not less than 100 per cent of par subject to the execution by the gas company and Halsey, Stuart & Company of the terms and provisions stated in the agreement made between the gas company and Halsey, Stuart & Company dated July 24, 1944. As set forth above, this would require the payment by August 1, 1944, of $12,000,000 to the Brooklyn Union Gas Company and the temporary issuance to Halsey, Stuart & Company of the debentures later to be offered to the public through competitive bidding with the agreement that Halsey, Stuart & Company will, at that time, submit a bid offering at least par for the final purchase of said debentures.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re The Pennsylvania Railroad Company

Application Docket No. 61583
June 12, 1944

PETITION *by railroad company for clarification and amendment of order relating to construction of crossing improvement; denied.*

Crossings, § 59 — Cost of improvement — Relocation of power facilities — Clarification of order.

An order approving an overhead railroad crossing involved in the construc-

tion of an industrial siding to serve a naval supply depot, pursuant to an agreement between the Navy Department of the United States and a railroad company, and requiring public utilities to relocate their facilities at the crossing and the railroad company to pay all compensation for damages due to owners for property taken, injured, or destroyed by reason of the construction, needs no clarification or amendment although the government has refused to authorize reimbursement of a power company for costs incurred in relocating and changing its facilities, the railroad company's right to recover from the government depending upon the contract and being beyond the jurisdiction of the Commission.

(BUCHANAN, Commissioner, dissents.)

By the COMMISSION: This matter is before us at this time upon the petition of The Pennsylvania Railroad Company for clarification and amendment of our order dated December 28, 1942, issued in disposition of petitioner's application seeking our approval of the construction of a crossing above grade as described above. Since the petition failed to allege the existence of new or undiscovered evidence so as to warrant the taking of testimony, the matter was set for oral argument after the submission of answers to the petition. It is our belief that the petition could be disposed of upon technical grounds; however, because the subject involves the public interest, we shall dispose of the matter upon the merits.

From the averments of the petition and the oral presentations of counsel, it appears that pursuant to an agreement between the Navy Department of the United States government and The Pennsylvania Railroad Company, the latter filed its application on July 7, 1942, seeking our approval of the construction of a crossing above grade where an industrial siding to serve the Naval Supply Depot would cross over and above the highway known as Trindle road in Hampden township, Cumberland county. The siding stems from the Cumberland Valley branch of the Philadelphia division of the petitioner railroad. After hearing on September 9, 1942, at which time plans prepared by the Navy Department were submitted and accepted, we issued our report and order dated December 28, 1942, approving the construction of the improvement, a substantial portion of which had been completed pursuant to our preliminary order issued July 21, 1942, at the specific request of the petitioner.

During construction a portion of the respective facilities of the Bell Telephone Company of Pennsylvania and Pennsylvania Power & Light Company had to be relocated. Petitioner repaid the Bell Telephone Company for its costs attendant thereto, but has not repaid the Pennsylvania Power & Light Company because the Navy Department refuses to permit or sanction such reimbursement upon the ground, inter alia, that the agreement between it and the railroad company did not contemplate such expenditure.

In our order of December 28, 1942, of which the petitioner now requests clarification, we recognized that the Federal government does not require our approval to construct the railroad connecting track and the proposed

crossing, and, as a consequence of such fact, we specifically stated that The Pennsylvania Railroad Company which will operate the trains over said track and crossing would be directed to construct and maintain the connecting track without prejudice to its right to recover from the United States government, part or all of the cost incurred in such construction in accordance with any lawful agreement or understanding between such parties. In conformity with the plans submitted and approved, and based upon the record taken at the hearing, we found, determined, and ordered, inter alia, that any relocation of, changes in, or removal of any adjacent equipment or other facilities of any public utility which may be required as incidental to the execution of the improvement should be made by said public utility in such manner as would not interfere with the construction of the improvement. We also directed in paragraph No. 9 of the aforesaid order that The Pennsylvania Railroad Company, applicant and petitioner before us at this time, pay all compensation for damages, if any, due to the owners for property taken, injured, or destroyed by reason of the construction of the crossing improvement in accordance with the order.

In accordance with our directive, the Bell Telephone Company of Pennsylvania and the Pennsylvania Power & Light Company changed and relocated their respective facilities. Subsequent thereto, the Bell Telephone Company presented its bill for the costs of said relocation and petitioner paid such costs. We are advised that the Pennsylvania Power & Light Company has presented its bill for costs incurred by it in relocating and changing its facilities, but the petitioner has not paid said bill because the Navy Department has refused to authorize payment or to reimburse petitioner if the latter makes such payment. As heretofore stated, it is by reason of this circumstance that petitioner now requests clarification and amendment of the order under which the improvement was constructed. Each of the three utilities here involved has frequently been a party at interest in like proceedings, which were similarly disposed of by the Commission, and it seems clear to us that they have no misapprehension concerning the interpretation of that order, or the intent behind its issue. Their respective positions indicate that petitioner, The Pennsylvania Railroad Company, which sought our approval for, and which directly or indirectly benefited by the improvement, interpreted our directive in its intended aspect by undertaking to pay all costs attendant thereto. The unequivocal reimbursement of the Bell Telephone Company for its costs and the anticipated reimbursement to the Pennsylvania Power & Light Company established that fact. It is also patent that the latter company and the Bell Telephone Company properly followed our intended program, not only by presenting their respective bills to petitioner for payment, but also by the same consistent positions taken by them at oral argument.

There can be no misunderstanding of the order; property of the Bell Telephone Company of Pennsylvania and Pennsylvania Power & Light Company was taken, injured, or

destroyed, and the damages thus sustained are, under the order, payable by The Pennsylvania Railroad Company. The railroad company's right to recover from the United States government depends upon the contract between them, and is a matter beyond our jurisdiction; therefore,

Now, to wit, June 12, 1944, It is *ordered:* That the petition of The Pennsylvania Railroad Company for clarification and amendment of the order dated December 28, 1942 as of A. 61583 be and is hereby denied.

The Chairman being absent did not participate in the vote on this order; Commissioner Buchanan files a dissenting opinion.

BUCHANAN, Commissioner, dissents: The matter before us is a petition by Pennsylvania Railroad for "clarification" of our order of December 28, 1942. There is no provision for such pleading either under our law or in our rules of practice.

First of all, the order of December 28, 1942 needs no clarification because that order provided for no reimbursement to the utility required to effect alterations to its own facilities. However, very apparently *now,* that had not been the intention of the Commission, then.

In the present order the majority have "clarified" our order of December 28, 1942, but at the same time have denied the "petition for clarification," an unnecessary contradiction. The same ultimate result reached by the majority can be obtained in this case, in my opinion, by a less devious and less harmful approach to the problem before us.

The petition is occasioned by the inadvertent omission of certain standard wording from paragraph 5 of our order of December 28, 1942, paragraph 5 being a standard or form paragraph inserted in all crossing orders resulting from applications of parties other than Department of Highways and intended to fix the liability for the *cost* of the relocation, change or removal of public utility facilities located *within* the limits of the highway and which alterations are *incidental* to the major improvement.

Paragraph 5 as we normally apply it with the words and phrases which were omitted from our December, 1942, order, italicized, follows:

(5) That any relocation of, changes in or removal of any adjacent structures, equipment, or other facilities of any public utility *other than Pennsylvania Railroad Company located within the limits of the highway* which may be required as incidental to the execution of the improvement herein ordered, be made by said public utility *(at its sole cost and expense) (at the cost of Pennsylvania Railroad) and* in such a manner as will not interfere with the construction of the improvement. (One or the other of the bracketed phrases is used depending upon the facts and circumstances of each case.)

The majority would correct this mistake of omission, first, by holding that the three utilities involved should know what we intended to say but did not, and secondly, by holding that paragraph 9 of our December, 1942, order specifically directed Pennsylvania Railroad to pay the disputed costs. The answer to the first position is obvious in the light of the normal use of paragraph 5 and the contradic-

tion thereof resulting from the omissions in our order as written. As to the second position, paragraph 9 is likewise a standard or form paragraph covering *damages without* the highway limits. Standard practice in such matters would not permit the application of it to *incidental construction costs within* the limits of the highway. To here imply that it should, results in confusion confounded.

It would seem much less dangerous to future practice before us to adopt one of two possible and more proper methods of correcting our error; first, on our own motion and by supplemental order, to correct paragraph 5 by adding the words and phrases inadvertently omitted thereby removing with such understandable words the obvious ambiguity resulting from our departure from standard practice, or, second, require petitions to be filed by Pennsylvania Power & Light Company and the Bell Telephone Company of Pennsylvania for an award of damages under § 411 of the Public Utility Law; St. Clair v. Pottsville Water Co. (1928) 9 Pa PSC 398, 403. Of the two courses, the first is preferable as being quicker, less involved and because it goes to the heart of the controversy. Re Lehigh Valley R. Co. A. 60626, Supplemental order of October 5, 1942.

The anomalous position in which we are placed by the majority order, in my opinion, establishes a harmful precedent and leaves confusion in a practice hitherto standard for many years.

For these reasons, I dissent from the majority action.

UNITED STATES DISTRICT COURT FOR DISTRICT OF COLUMBIA

United States of America

v.

American Telephone & Telegraph Company et al.

Civil Action No. 23189
— F Supp —
April 27, 1944

INJUNCTION *proceeding relating to imposition of surcharges, in violation of filed telephone tariffs, by hotels on toll or interstate calls made by guests; injunction granted. For decisions by Federal Communications Commission, see (1943) 52 PUR(NS) 141.*

Telephones, § 1 — Constitutionality of Federal Communications Act — Telephone surcharges by hotels.

1. The law and regulations whereby the Federal Communications Commission was established and has acted, in regulating surcharges by hotels on interstate phone calls, are lawful and valid, p. 33.

Courts, § 15 — Jurisdiction of particular court — Telephone surcharges by hotels.

2. The district court for the District of Columbia has jurisdiction over an injunction proceeding relating to the imposition of surcharges, in violation of filed telephone tariffs, by hotels on interstate or toll phone calls made by guests, as well as over the telephone companies and hotels involved, p. 33.

Rates, § 13.3 — Jurisdiction of Communications Commission — Telephone surcharges — Hotels.

3. The Federal Communications Commission has jurisdiction over tariff schedules governing telephone companies and others engaged in the business, and any relief relating to the imposition of surcharges by hotels on interstate phone calls made by hotel guests that the hotels or telephone companies may wish should be taken up before that Commission, p. 33.

Injunction, § 52 — Telephone surcharges by hotels — Evidence of commissions paid.

4. The court, in entertaining an action to enjoin hotels from making surcharges on toll or interstate calls made by guests, refused to consider evidence relating to the telephone company's proposed payment of 15 per cent commission to the hotels, p. 33.

Injunction, § 50 — Telephone surcharges by hotels — Reasonableness of surcharges.

5. The court, in entertaining an action to enjoin hotels from making surcharges, in violation of filed telephone tariffs, on toll or interstate calls made by guests, refused to consider the reasonableness of the surcharge, p. 33.

Telephones, § 1 — Agents of the company — Hotels.

6. Hotels which collect surcharges for toll or interstate telephone calls made by guests are subscribers rather than agents of the telephone company, and the telephone companies are not responsible for what the hotels charge, p. 34.

Injunction, § 27 — Telephone surcharges made by hotels — Violation of company tariffs.

7. Hotels should be enjoined from imposing surcharges, in violation of filed telephone tariffs, for tolls or interstate phone calls made by hotel guests, p. 36.

Injunction, § 32 — Jurisdiction of court — Service denial — Phone service to hotels.

8. The courts have jurisdiction to restrain telephone companies from furnishing service to hotels which violate an injunction restraining them from imposing surcharges, in violation of filed telephone tariffs, on toll or interstate phone calls made by guests, p. 36.

By the COURT: Well, the court will announce its decision—since all parties concerned have concluded their arguments—orally from the bench.

[1] In the first place the court holds that the law and the regulations involved in this case, whereby the Federal Communications Commission was established and acts, are lawful and valid.

[2, 3] The court holds that this court has jurisdiction of the subject matter of this case and of the parties, and that the Federal Communications Commission likewise had jurisdiction of the matter of the tariff schedules, and so on, that were made governing the two defendant telephone companies and others engaged in the telephone business.

Now that covers the points of law that have been raised here.

The court holds that any relief along the lines of the tariff schedules, that the hotels here may wish, or that the telephone companies here may wish, should be taken up before the Federal Communications Commission.

[4] Now on the matter of motions to strike out certain testimony, or objections, rather, to the admissibility of certain testimony, the court rules now that it is not to consider and will not consider in its decision any of the testimony, oral or written, that was offered in this case in regard to a proposed 15 per cent commission to be paid by the telephone companies to the hotels. That was merely an offer. It didn't go so far as to be called an offer of compromise because there is no controversy in regard to money or charges between the telephone companies and the hotels. It may be a businesslike proposition on the part of the telephone companies to try to help the hotels out, because they are mighty good customers of the telephone companies.

But whatever the motive was that prompted it, it wasn't an offer of compromise, and even if it were, the court shouldn't consider it because it was never carried through; and if it was a generous offer—I doubt whether I could go so far as to say it was—but if it was a businesslike proposition, or if selfish interests were governing the telephone company, whatever it was, it doesn't bear upon the essential issues of law and fact in this case.

Therefore, the court is not considering any of the evidence, oral or written, that was introduced here in regard to that proposed payment of 15 per cent of the toll charges to the hotel defendants.

[5] Now there has been testimony offered here to show that what the hotels put on the bills of those guests who used the long-distance phones was a reasonable charge for secretarial service or hotel service, or whatever else you wish to call it. Well, the court will not consider or go into the question of whether it is reasonable or unreasonable, because that isn't an issue in this case. Maybe it is most reasonable, and maybe the hotel guest is very well pleased with the amounts that have been charged for the accommodation and services rendered. But that isn't here before me.

I couldn't undertake to say that the hotels are rendering services worth 15 per cent of the charge for long-distance calls, and therefore should be able to add that amount to the bills of their guests; I couldn't say that the 10 per cent that they are apparently charging is too much or a fair charge, or what. So the court is going to disregard the testimony concerning the reasonableness of this charge, or sur-

charge, that the hotels are making to their guests for long-distance calls. So that is eliminated from the case.

[6] Now although it may not be required of the court—because the Federal Communications Commission takes an alternative position—to pass upon the issue as to whether the hotels are agents of the telephone companies, or whether they are to be regarded as subscribers, I think a court ought to take a stand on that because that is a vital issue in this case.

With all due respect to the plaintiff in this case, the government, I think they ought to come into court on a definite theory and not leave the court to choose, and the plaintiff say, "Well, take this and if you don't like it, take that and make it the basis of your decision."

In the opinion of the court the testimony in this case actually fails to show that these hotels are the agents of the telephone company. There was no written agreement to that effect introduced here; there was no oral agreement to that effect introduced here; and there is no testimony, written or oral, from which this court could imply the existence of an agency in the hotels on behalf of or as agent of the telephone company.

In the opinion of this court the hotels are subscribers. They enter into a contract with the telephone company. "You render us such and such service and we will pay you such and such money." They get the bill every month or two and they pay the telephone company—that was the evidence in this case—the amount that they owe them as subscribers for telephone service from the telephone company.

Now that being so, the telephone companies have no control whatever over what these hotels are doing in regard to this surcharge. But they have knowledge of it. At least, if they didn't have knowledge of it before this case came up, they have knowledge of it today. As a matter of fact the testimony shows that they have had knowledge of it for some time because they have discussed the matter and endeavored to make some settlement of it.

So the telephone companies are charged with what the hotels are doing in regard to these surcharges they are making on the bills of their guests, for toll or interstate messages.

Now that brings up the question of why we have a Federal Communications Commission. Well, maybe some people wish we didn't have it.

Then the question comes up as to what persons, what property, or what purpose this Federal Communications Commission was established for. I take it that without doubt it was established for the benefit of the public, and to protect the public in regard to such matters as those involved in this case. They didn't want to leave the public at the mercy of the telephone companies, having a monopoly, as one witness undertook to say, or maybe I suggested it to him. But anyway, monopoly or no monopoly, this act and these regulations and these tariff schedules in regard to telephone messages going out through the states, all have the principal purpose of protecting the public against being overcharged. If we didn't have the Federal Communications Commission, and didn't have the regulations, and didn't have these tariff schedules, the telephone com

panies could say, if you wanted to talk to John Jones in New York, "$10," or "$20." The man calling New York from Washington would say, "That is too much." They would say, "Well, if you think it is too much you can't talk, you can take the train and go up and see him."

Well, you know such things have been done in the past by corporations, especially by public utilities when they weren't under control.

I have said that because the public are the ones to be primarily protected by this Commission and by the law establishing it, and by the regulations and orders that it has made.

If someone who is connected with getting these messages from the person telephoning, to the receiver in New York, the person receiving the message, if somebody else who has some connection or part in transmitting those messages undertakes to slap on an extra charge, whether it is 5 per cent, 10 per cent, 20 per cent, or maybe 50 per cent, or it might even be 100 per cent, just doubling it up, if that were permitted it would be negativing in part, or maybe entirely, the purpose of this Commission and the purpose of this law and of the regulations and orders of this Commission, and the public would not be protected in regard to their interstate telephone messages.

Now that being so, if someone who has gotten telephone facilities as a subscriber, from the telephone company—and they have gotten those facilities for their own benefit, to accommodate their guests in the hotel—undertakes, when the messages are going through, to render services to the guests, and then undertakes to surcharge and make the charge go above, in amount, the tariff schedule, that would be doing indirectly what the telephone company is not allowed to do, and what the law, by its express and implied terms, and by the regulations of this Commission, and its orders, did not mean to allow.

Now under those circumstances I think that the hotels—it isn't for me to say what they should do—but they could render less service because they were not getting paid for it, just like you could put dimmer lights in the rooms of a hotel, instead of 60-watt lights you could put in 40-watt lights—that is up to the individual hotel. They are in competition with one another and they can spend as little or as much as they see fit in trying to get guests and patrons and trying to keep them.

So in this case they don't have to render all the service that they do. And if it is too expensive—they all appear to be pretty well organized here—they can all agree to cut down on the expense where they are losing money. They could do that or they could charge for these services separately under some other item, whatever they might wish to call it—secretarial services, accommodation for this or that. Or they could go before the Federal Communications Commission and ask to have an allowance put in the tariff schedule; or they could go to the rent commission and because of the action of this court—if an injunction is granted—could say, "We should get more rent for our rooms." Or the hotels could go to the food or the drinks commissions and try to get them to permit a raise in the price of food or drinks.

But that is up to the hotels; they will

just have to figure out a way to get the money; and if they can't get it this way they will either have to cut down the service or get it some other way.

Then—of course I needn't suggest it but—if they want to they have the proposition made to them of getting 15 per cent from the telephone company.

As I say, these suggestions I have made are just thoughts, but they don't enter into my decision at all. The hotels have, as I have indicated, a number of possible ways in which they may recoup the losses they say they are sustaining; but the court isn't concerned with that, that is a worry of the hotels and not of this court.

Accordingly the court considers that in this case, while it could enjoin these telephone companies if the facts of the case required, from the facts in this case it appears that the telephone companies are not violating the tariff schedules at all, and therefore there is no remedy that should be granted at this time against the telephone companies for any acts of their own. Since the court has held that the hotels are not the agents of the telephone companies, therefore the telephone companies are not responsible for what the hotels are doing now.

[7] But the hotels know what they are doing, and the court holds that they are responsible for what they are doing, and they are making the public pay more for toll charges, or for interstate telephone charges than what the Federal Communications Commission has allowed, and therefore they are violating this tariff schedule of the Federal Communications Commission, they are violating the law, and violating the rules of the Federal Communications Commission, and should be enjoined accordingly.

So the court will grant an injunction restraining the hotels from adding these surcharges to the bills of the guests of the hotels, in addition to the regular charge for the interstate toll charges.

[8] The court will further reserve, in this case, jurisdiction of it so that should the hotels refuse to obey the order of this court, enjoining them from making these charges, and the telephone companies, knowing that they have made these charges and that they are still making them, and that by rendering them phone service they will thereby be aiding and abetting them, and indirectly, maybe, encouraging them to violate the order of this court and the order of the Federal Communications Commission, then the court would feel that it would have jurisdiction and authority to enjoin the telephone companies by mandatory injunction, or prohibitive injunction, rather, prohibiting them from rendering any further service to those hotels.

That, I think, covers all the issues in the case.

Counsel can confer together and prepare findings of fact, conclusions of law, and a judgment in the case.

UNITED STATES DISTRICT COURT, D. DELAWARE

Cora Homewood et al.

v.

Standard Power & Light Corporation et al.

No. 229
55 F Supp 100
April 29, 1944

PETITION *by preferred stockholders of registered holding company, in derivative action against certain investment bankers, for appointment of trustee to protect stockholders' interests in proceedings before the Securities and Exchange Commission; supplemental complaint permitted to be filed but no forward action by way of responsive proceedings required of defendant, and appointment of trustee refused.*

Courts, § 18 — Appointment of trustee — Pending proceedings before Commission — Holding company liquidation.

A court in which a derivative stockholders' action has been started on behalf of a holding company against certain investment bankers who allegedly controlled the corporation, to its loss, should not, upon application of such stockholders, appoint a trustee to protect such stockholders in proceedings before the Securities and Exchange Commission, to submit a plan before the Commission, to intervene in proceedings for recapitalization of a subsidiary of the holding company, and to take possession of and distribute the holding company's assets, where the Commission has directed the liquidation of the holding company and presently has before it a plan of recapitalization which will undoubtedly deal with rights and liabilities involved.

APPEARANCES: Ivan Culbertson, of Wilmington, Del., and Maurice J. Dix, of New York city, for plaintiffs; Howard Duane, of Wilmington, Del., and H. Preston Coursen, of New York city, for Standard Power & Light Corporation; Caleb S. Layton, of Wilmington, Del., for H. M. Bylesby & Co.; Edwin D. Steel, of Wilmington, Del., for Bancamerica Corporation; Clair J. Killoran, of Wilmington, Del., for A. C. Allyn & Co.; John J. Morris, Jr., U. S. Atty., of Wilmington, Del., and David Kadane, of Philadelphia, Pa., for the Securities and Exchange Commission.

LEAHY, D.J.: This derivative stockholders' action started in September, 1941, on behalf of Standard Power and Light Corporation against certain investment bankers who allegedly

illegally controlled the corporation to its loss. Answer was filed. The action has since been dormant. Now, plaintiffs seek to file a supplemental complaint—which defendants oppose—charging Standard with doing no business, as a useless holding company [1] with operating expenses exceeding income, with asset values less than liquidating preferences on Standard's preferred stock, and with sole voting power in the common stock, which is without equity. Standard's management is charged with designs to circumvent the Public Utility Holding Company Act of 1935, 15 USCA §§ 79 et seq., by working solely in the interests of the common stock. In substance, the supplemental pleading alleges that the causes of action set out in the original complaint are of enough value to pay preferred in full; that "disintegration" [sic] of Standard will occur without judicial control with resultant irreparable damage to preferred as they have "no voice" with respect to any plan of liquidation which, under the act, must be filed and approved by the Securities and Exchange Commission; that this court should supervise an equitable dissolution of Standard by protecting Standard's causes of action against defendants; that Standard's management has failed to call a meeting of stockholders to vote upon a voluntary dissolution; that a certain plan of recapitalization filed by Standard Gas and Electric Company with the SEC will eliminate all value of that company's common stock owned by Standard; that the present interests of Standard's management is in conflict with their duties in protecting Standard's interests in the Standard Gas and Electric Company plan; that a forced sale of Standard's assets would be detrimental to its preferred stockholders; and finally, no judicial proceedings have been started by Standard for its liquidation or distribution of its assets.

On the basis of these supplemental allegations, plaintiffs pray (1) for a court-appointed trustee to protect preferred stockholders in all proceedings before the SEC; (2) to submit a plan before the Commission protecting the causes of action alleged in the original complaint; (3) to intervene in the proceedings for recapitalization of Standard Gas and Electric Company; and (4) to take possession of and distribute Standard's assets.

Standard objects to the supplemental pleading because it fails to state a claim upon which relief can be granted,[2] because it pleads a new cause of action,[3] and because it pleads a cause of action which cannot be joined with the particular causes of action set forth in the original complaint.[4]

The court finds it unnecessary to consider the preliminary arguments urged by plaintiffs as to the application

[1] On June 19, 1942, the Securities and Exchange Commission entered an order under § 11(b)(2) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(b), requiring Standard to liquidate and terminate its existence. No appeal was taken from this order and the appeal period has elapsed. Standard has, however, by order of the Commission, until June of this year to submit a plan of liquidation.

[2] Reliance is had on Myers v. Occidental Oil Corp. (1923) 288 Fed 997, and Edwards v. Bay State Gas Co. (1898) 91 Fed 942.

[3] Berssenbrugge v. Luce Mfg. Co. (1939) 30 F Supp 101.

[4] Standard relies on Brock v. Poor (1915) 216 NY 387, 111 NE 229; Levine v. Elbe (1937) 252 App Div 511, 299 NY Supp 888; Abrahams v. Bachmann (1933) 238 App Div 320, 264 NY Supp 131; Witherbee v. Bowles (1911) 201 NY 427, 95 NE 27; Willcox v. Harriman Securities Corp. (1933) 10 F Supp

of certain of the Rules of Civil Procedure.[5] Likewise, it is unnecessary to consider the other points urged by plaintiffs that, even in the face of Erie R. Co. v. Tompkins (1938) 304 US 64, 82 L ed 1188, 58 S Ct 817, 114 ALR 1487, a Federal court may grant relief by appointment of a receiver or trustee of a solvent corporation, in the case of fraud and mismanagement, irrespective of state law.[6]

In Securities and Exchange Commission v. Standard Power & Light Corp. (1943) 49 PUR(NS) 407, 48 F Supp 716, this court held that where the SEC had ordered Standard, as a public utility holding company, to liquidate and terminate its existence, a preferred stockholder could not invoke the process of a state chancery court to liquidate the utility in view of the Public Utility Holding Company Act of 1935, §§ 11(b–d), 18(f), 15 USCA §§ 79k(b–d), 79r(f), and Jud Code, § 265, 28 USCA § 379. As the crux of the relief presently sought by plaintiffs is essentially the same as that sought by the intervener in the earlier case (48 F Supp 716), obviously the court's former holding is a fortiori authority against plaintiffs here. It becomes quite unnecessary, then, to repeat what was said in the former opinion respecting the expert competence of the SEC to carry through to completion its own orders. The Commission has taken Standard into its custody. It presently has before it

532; Harden v. Eastern States Pub. Service Co. (1923) 14 Del Ch. 156, 122 Atl. 705; Fleer v. Frank H. Fleer Corp. (1924) 14 Del Ch 277, 125 Atl 411; Perrine v. Pennroad Corp. (1934) 20 Del Ch 106, 171 Atl 733; Morse v. Bay State Gas Co. (1898) 91 Fed 944. The court considers it unnecessary to discuss the applicability of these cases at this time.

[5] Rule 15(a) of the F.R.C.P., 28 USCA following § 723c, that leave "shall be freely given whenever justice so requires," which is similar to old Equity Rule 19, 28 USCA § 723 Appendix, which provided for amendments "in furtherance of justice." And Indianapolis v. Chase Nat. Bank (1941) 314 US 63, 69, 86 L ed 47, 62 S Ct 15, 17, for "Litigation is the pursuit of practical ends, not a game of chess."

[6] Plaintiffs urge that Galdi v. Jones (1944) 141 F(2d) 984, holds that a Federal district court, under its general equity powers, has, independent of any state statute, power to appoint a receiver for a solvent corporation at the request of a stockholder claiming waste and gross mismanagement, i. e., Federal courts apply equitable remedies without restraint by state law.

In support of this view, a reading is suggested of Smyth v. Ames (1898) 169 US 466, 516, 42 L ed 819, 18 S Ct 418; Mississippi Mills v. Cohn (1893) 150 US 202, 37 L ed 1052, 14 S Ct 75; Union Bank of Tennessee v. Vaiden (1856) 18 How (59 US) 503, 15 L ed 472. In Pusey & Jones Co. v. Hanssen (1923) 261 US 491, 67 L ed 763, 43 S Ct 454, 456, Mr. Justice Brandeis, after considering the Delaware statute which authorized the appointment of a receiver where a corporation was insolvent in the equity sense (solvent but unable to meet maturing obligations as the same fell due), said: "But because that which the statute confers is merely a remedy, the statute cannot affect proceedings in the Federal courts sitting in equity." In Burnrite Coal Briquette Co. v. Riggs (1927) 274 US 208, 71 L ed 1002, 47 S Ct 578, where a receiver was appointed for a solvent corporation, Mr. Justice Brandeis again said (at p. 209 of 274 US): "This suit was brought in the Federal court for New Jersey against Burnrite Coal Briquette Company, a Delaware corporation, by Riggs, a stockholder. The bill charged gross mismanagement; [and] prayed for the appointment of a receiver to conserve assets . . . [at p. 212 of 274 US]. The court of appeals held that there was lack of jurisdiction of the subject-matter. It assumed that the jurisdiction . . . was dependent upon the state statute. This was error. A Federal district court may, under its general equity powers independently of any state statute, entertain a bill of a stockholder against the corporation for the appointment of at least a temporary receiver in order to prevent threatened diversion or loss of assets through gross fraud and mismanagement of its officers." Cf. Tower Hill-Connellsville Coke Co. v. Piedmont Coal Co. (1933) 64 F(2d) 817, 91 ALR 648, certiorari denied (1934) 290 US 675, 78 L ed 582, 54 S Ct 93; Alexander v. Hillman (1935) 296 US 222, 80 L ed 192, 56 S Ct 204; Id. (1935) 75 F(2d) 451. See Barrett v. Denver Tramway Corp. (1943) 53 F Supp 198, 201, 203.

Standard Gas and Electric Company's plan of recapitalization which will, undoubtedly, deal with Standard's rights and liabilities with respect to the former company. Hence, the Commission's order of June 19, 1942, directing Standard to present a plan of liquidation to the Commission, was an order to liquidate under the Commission's supervision and in no other manner. The present proffer of plaintiffs to file a supplemental complaint must not interfere with the Commission's investigation of the affairs of both Standard and Standard Gas and Electric Company. If committed, the alleged sins of Standard's management in dealing with their own company and its interests in Standard Gas and Electric Company will come to light. The preferred stockholders do not allege that the SEC has refused any relief sought. The administrative agency in investigating the relative values of all interests in both corporate enterprises has not denied to a single preferred stockholder the right to be heard. It is not the function of the Commission to insist that the plaintiffs here, or any other stockholder, appear before it and tell of their grievances. The fact that the plaintiffs have not gone to the Commission is not without significance. Where a party does not seek to enlist the protective sanctions of the SEC, or at least warn that agency by formal charges that potential equities lurk behind a submitted plan of a utility, in favor of a particular group, a court should hesitate to proceed with litigation against companies which are under the jurisdiction of the Commission.

Some may call this delayed judicial action, but this court, in attempting to integrate the Public Utility Holding Company Act into the judicial process in view of the SEC's statutory duties, rules that the supplemental complaint may only, at this time, be filed with the clerk. The supplemental pleading will simply rest here until the SEC completes its administrative analysis of both the Standard Gas and Electric Company plan, now before the Commission, and Standard's plan, which must be filed within several months. The Commission's recommendations respecting the prosecution or abatement of the instant action now pending in this court, after it has passed on both plans, will receive critical examination. But no forward action, by way of responsive pleading, will be required of defendants. The Commission once moved this court ([1943] 49 PUR(NS) 407, 48 F Supp 716, 720) to take exclusive jurisdiction of Standard's assets under § 11(d) of the act. In time, that application may be renewed. In the interim, the court finds no present necessity for the appointment of a trustee of Standard's assets for any of the purposes detailed in the supplemental pleading.

An order may be submitted permitting the supplemental complaint to be filed with the clerk.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pottsville Water Company

v.

Silver Creek Water Company et al.

Complaint Docket No. 13947
June 19, 1944

COMPLAINT *against contract between public utility and municipality for water service at specified rates; dismissed for lack of jurisdiction.*

Rates, § 212 — Validity of contract — Moot question after filing as tariff.

1. The question of the validity of a contract providing for public utility service to a municipality at specified rates, executed when there was no regularly filed published tariff rate for that service to the municipality, was made moot by the fact that the contract was filed as a tariff rather than as a contract, the result being that the contract became merely an agreement to pay what became the regularly filed and published tariff rate, p. 42.

Rates, § 234 — Tariff — What constitutes.

2. So long as a tariff establishes rates to be collected or enforced, it is immaterial what form it takes, with respect to its efficacy as a tariff, p. 42.

Rates, § 234 — Rate tariffs — Materiality of validity of contract.

3. If a contract is filed as a tariff, it is immaterial whether the contract as such is valid or invalid, p. 42.

Contracts, § 3 — Jurisdiction of Commission — Construction or enforcement.

4. The Commission has no jurisdiction to construe or enforce contracts between public utilities and municipalities unless questions of rates or service are involved, p. 43.

Contracts, § 3 — Jurisdiction of Commission — Private contracts.

5. The Commission has no jurisdiction to entertain an action brought by a public utility attacking a contract between a municipality and a competing public utility providing for service at regularly filed and established rates, since it has no jurisdiction over such contract or over the complainant's remedies arising out of a contract for a like service between it and the municipality, p. 43.

(BUCHANAN, Commissioner, dissents.)

By the COMMISSION: This matter arises on a complaint filed by The Pottsville Water Company, a petition by respondents to dismiss, and an answer by the complainant to the petition to dismiss.

It appears from the complaint that on August 19, 1927, The Pottsville

Water Company, complainant, and the borough of Schuylkill Haven, one of the respondents, executed a written contract (approved by the Public Service Commission on September 12, 1927, at MC–4147) whereby the company agreed to furnish the borough at least 5,000,000 gallons of water monthly at the rate of 8 cents per thousand gallons and the borough agreed to take and pay for said minimum quantity monthly. By its terms, the contract is to continue for thirty years from its date. On August 9, 1943, the Silver Creek Water Company and the borough of Schuylkill Haven executed a written contract, to be considered effective as of June 12, 1943, and to continue until its termination six months after the close of the present war, whereby the company agreed to supply the borough with a monthly minimum quantity of water of at least 1,000,000 gallons daily or with a quantity equal to the total monthly consumption of water by the plant of the Aluminum Company of America at Cressona, whichever quantity is less. The borough agreed to pay 8 cents per thousand gallons for all water furnished to it. This latter contract was filed August 15, 1943, as Silver Creek Water Company Tariff Pa. PUC No. 6, to become effective October 15, 1943. The tariff made changes in the existing tariff then on file by establishing rates for furnishing water to the borough of Schuylkill Haven. Obviously, the Silver Creek Water Company tariff then on file did not prescribe such rates, and this was the change to be effected by the new tariff.

The complaint of The Pottsville Water Company was filed on October 14, 1943. It alleges substantially that the respondents have violated § 911 of the Public Utility Law by failing to file the contract of August 9, 1943, at least thirty days prior to its effective date; that the contract is illegal, unreasonable, inequitable, and unfair to complainant and violates the rights of complainant under its prior contract with the borough of August 19, 1927; that whereas in June, 1943, the borough purchased over 25,000,000 gallons of water from complainant, in July, 1943, it purchased only 6,000,000 gallons; that the effect of the Silver Creek contract is to reduce complainant's return on its investment which may necessitate an increase in rates; and that the contract provides for matters other than the furnishing of service at regularly filed and published tariff rates. The prayer of the complaint is that the contract of August 9, 1943, be declared invalid. The complaint, it will be noted, makes no attack on the tariff.

The petition to dismiss the complaint alleges substantially that the complaint is insufficient to show a breach of legal duty; that the complainant has no interest in the subject matter of the complaint of which the Commission may take cognizance; that complainant's contractual rights under its agreement are beyond the control of the Commission, the contract being private in character; that complainant's remedy is at law; and that the contract is not within the provisions of § 911 since it is merely an agreement to pay the scheduled effective rates of Silver Creek Water Company.

[1–3] The question involved is whether the Commission, under the

facts pleaded, has jurisdiction of the complaint.

Section 911 provides:

"Contracts between Public Utilities and Municipalities.—No contract, or agreement between any public utility and any municipal corporation shall be valid unless filed with the Commission at least thirty days prior to its effective date: Provided, That upon notice to the municipal authorities, and the public utility concerned, the Commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality, or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval thereof: Provided further, That nothing in this section shall be construed to apply to contracts or agreements between any public utility and any municipal corporation which provide only for the furnishing of service at the regularly filed and published tariff rates."

Under this section, a contract between a public utility and a municipal corporation is, by legislative action, invalid unless filed with the Commission at least thirty days prior to its effective date. That is, it is invalid as a contract. Under the proviso, however, the section does not apply to contracts which provide only for the furnishing of service at the regularly filed and published tariff rates. When the contract between Silver Creek Water Company and the borough was executed there was no regularly filed and published tariff rate for furnishing water to the borough of Schuylkill Haven. Consequently, at that time, the contract did not provide only for the furnishing of service at the regularly filed and published tariff rates. As it stands now, however, the contract is merely an agreement to pay what are now the regularly filed and published tariff rates. So far as the Commission is concerned, the question of the validity of the contract is now moot.

The contract was not filed as a contract under the provisions of § 911; it was filed by Silver Creek Water Company as a tariff. Section 302 of the Public Utility Law requires that every public utility shall file with the Commission tariffs showing all rates established by it; and, under § 303, these are the only rates which the utility may demand or receive. The action of the utility in filing its tariff is ex parte. So long as the tariff establishes the rates to be collected or enforced, it is immaterial what form it takes. If, as here, a contract is filed as a tariff, it is immaterial whether the contract as such is valid or invalid. Initially, the only pertinent inquiry is whether the paper filed as a tariff shows what the rate is. If it does, the tariff, in the absence of complaint, becomes effective. As we have already said, the complaint under consideration does not attack the tariff; in fact, it raises no question involving rates or service. This means that the tariff has become effective and the validity of the contract is an immaterial matter.

[4, 5] Furthermore, the complaint does not raise any question within our jurisdiction. Unless questions of rates or service are involved, we are without jurisdiction to construe or enforce contracts between public util-

ities and municipalities. There can be no question that both contracts, The Pottsville Water Company contract and the Silver Creek Water Company contract, are private in character. If complainant's rights under its contract have been infringed, it must seek redress at law: Warren v. Public Service Commission (1922) 80 Pa Super Ct 10; Wallace v. Public Service Commission (1922) 80 Pa Super Ct 60; Bell Teleph. Co. v. Public Service Commission (1931) 103 Pa Super Ct 347, 158 Atl 186; Irwin v. Public Utility Commission (1940) 142 Pa Super Ct 157, 36 PUR(NS) 158, 15 A(2d) 547. Apparently, complainant concedes this position. It contends, however, that, in an action at law, the court would not have jurisdiction to pass upon the question of the validity of the contract between the borough and Silver Creek Water Company. This contention rests upon a misapprehension of the cases which hold that the courts will not adjudicate issues involving matters within the exclusive jurisdiction of the Commission, examples of which are: Klein-Logan Co. v. Duquesne Light Co. 261 Pa 526, PUR1919A 524, 104 Atl 763; Midland v. Steubenville, E. L. & B. V. Traction Co. (1930) 300 Pa 134, 150 Atl 300; Hickey v. Philadelphia Electric Co. (1936) 122 Pa Super Ct 213, 14 PUR(NS) 349, 184 Atl 553. This principle is inapplicable here because we have no jurisdiction over the remedies arising out of complainant's contract. In an action at law on that contract certainly the court will have complete jurisdiction to determine any issue properly raised. Whatever interest or rights the complainant has spring exclusively from its private contract, and we lack jurisdiction to adjudicate them.

For the reasons stated, we are of the opinion that the complaint must be dismissed.

BUCHANAN, Commissioner, dissenting: The basic issue here is whether the Pennsylvania Public Utility Commission or the courts have jurisdiction to enforce § 911 of the Public Utility Law. Upon determination of the jurisdictional issue a secondary issue is, whether Silver Creek Water Company and the borough of Schuylkill Haven failed to comply with § 911 of the Public Utility Law by reason of their failure to file with the Commission their contract thirty days prior to its effective date.

Disposing of the basic issue first, clearly jurisdiction under § 911 rests exclusively in the Commission. By Act of Assembly the Pennsylvania Public Utility Commission is the designated government agency to enforce the legislature's declared public policy as to all matters relating to rights, facilities, rates, service, and other correlated matters of a public utility. Whatever authority the courts in other days may have possessed over public utilities has been supplanted by the Public Utility Commission except that the right of appeal from the Commission's finding has been reserved to the courts under Art XI of the Public Utility Law. Pottsville Water Co. v. Public Service Commission (1921) 78 Pa Super Ct 56.

It has been said in Fogelsville & T. Electric Co. v. Pennsylvania Power & Light Co. 271 Pa 237, 240, PUR 1921E 767, 771, 114 Atl 822:

"For a proper determination of the

many matters submitted, the Commission has certain inquisitorial powers which may, to a degree, conflict with those generally understood to be within the purview of quo warranto by the attorney general. In passing on applications or complaints, as the case may be, as to duties, liabilities, powers, and limitation of powers of a public service company, inquiry must be made as to the rights or powers of the company to do or not to do the thing applied for or complained about. If they do not have, or, having once had, have since lost the rights and powers by nonuser, forfeiture or the like, the Commission, in its finding, determination or order, is primarily guided by a consideration of these matters. It may not definitely appear as a fact in the case, its existence not being controverted, but in all cases where a challenge is made to a right, power, or franchise, or in all cases of conflicting rights, the Commission could not intelligently perform its duties if it did not possess the power to determine to some extent whether or not a franchise existed." See also Pittsburgh R. Co. v. Public Service Commission (1934) 115 Pa Super Ct 58, 63, 6 PUR(NS) 369, 174 Atl 670.

It was said in Taylor v. Moore (1931) 303 Pa 469, 474, 154 Atl 799: "Since that act (Public Service Company Law of 1913) has become a part of our law, we have held, that our courts have no jurisdiction by bill in equity or otherwise to consider and judge such cases until they come to them on an appeal, by way of the procedure provided by that law. This is so even though the constitutional question of confiscation is involved, whether it be valuation, grade crossing, rerouting of cars, removal of poles and wires, operating in a given territory, or any question arising under that act; all have been referred to the particular remedy following the act of 1806."

In St. Clair v. Tamaqua & P. Electric R. Co. 259 Pa 462, 468, PUR 1918D 229, 233, 103 Atl 287, 5 ALR 20, it was said:

"Since the Public Service Company Law has been upon our books, we have consistently adhered to the rule that matters, within the jurisdiction of the Commission must first be determined by it, in every instance, before the courts will adjudge any phase of the controversy (Bethlehem City Water Co. v. Bethlehem [1916] 253 Pa 333, 337, 338, 98 Atl 646; New Brighton v. New Brighton Water Co. [1915] 247 Pa 232, 240–242, 93 Atl 327), and it is plain that the orderly procedure requires an adherence to this practice, otherwise different phases of the same case might be pending before the Commission and the courts at one time, which would cause endless confusion." See also Klein-Logan Co. v. Duquesne Light Co. 261 Pa 526, 529, PUR1919A 524, 104 Atl 763; Bethlehem v. Allentown (1922) 275 Pa 110, 118 Atl 643; Midland v. Steubenville, E. L. & B. V. Traction Co. (1930) 300 Pa 134, 142, 150 Atl 300; Hickey v. Philadelphia Electric Co. (1936) 122 Pa Super Ct 213, 215, 14 PUR(NS) 349, 184 Atl 553.

From the reading of these cases, it seems thoroughly clear to me that it was the intention of the legislature to confer exclusive jurisdiction in the first instance in the Pennsylvania Public Utility Commission to determine whether a public utility had met the

statutory requirements of § 911 of the Public Utility Law and no authority was granted to the courts to determine those questions except upon appeal from the findings of the Commission.

The intent of § 911 was to give at least thirty days' notice to the public and to the Commission of contracts between public utilities and municipal corporations such that the public should have an opportunity to protest against and the Commission to determine the validity, reasonableness, or legality of such contracts. To carry out this intent inter alia the legislature provided § 901 of the Public Utility Law which, in part, reads as follows:

" . . . The Commission may make such regulations, not inconsistent with the law, as may be necessary or proper in the exercise of its powers or for the performance of its duties under this act."

Also in § 902, the Public Utility Law provides:

"In addition to any powers hereinbefore expressly enumerated in this act, the Commission shall have full power and authority, and it shall be its duty to enforce, execute, and carry out, by its regulations, orders, or otherwise, all and singular the provisions of this act, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the Commission in this act shall not exclude any power which the Commission would otherwise have under any of the provisions of this act."

In the enforcement of the act and of any of its rules and regulations the Commission is empowered under § 1013 of the Public Utility Law as follows:

"The Commission may, in addition to the hearings specially provided by this act, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this act and by other acts relating to public utilities. Reasonable notice of all such hearings shall be given the persons interested therein."

Beyond any reasonable doubt the jurisdiction lies with the Commission not only to determine any issues that might be raised under § 911 but also with ample authority to enforce the Commission decision under Art XIII of the act. Therefore, we come to the second question.

Did Silver Creek Water Company and the borough of Schuylkill Haven fail to comply with § 911 of the Public Utility Law by reason of failure to file the contract thirty days prior to its effective date?

The formal contract between the respondents was dated August 9, 1943 and the tariff of Silver Creek Water Company on file with the Commission and effective at that time was Tariff Pa. PSC No. 5, effective July 1, 1934, establishing rates different than those in the contract of August 9, 1943. Said contract was filed August 15, 1943, as Silver Creek Water Company Tariff Pa. PUC No. 6, to become effective October 15, 1943. It therefore appears that the contract is not within the second proviso of § 911 and the majority likewise is agreed to that.

Respondent's attempt to draw a distinction between public and private contracts to support a contention that the contract in question is a private

contract and thus not subject to the requirements of § 911. Careful consideration of this position leads me to dismiss it as untenable. Section 911 is all-inclusive by its terms, embracing all public utility contracts with municipalities of whatever nature, with the sole exception of contracts for service at filed rates. Since, as stated, the contract before us does not fall within this exception, it is subject to the filing requirements of § 911.

Let us look at the contract itself. The contract in question is dated August 9, 1943, and by paragraph 7 thereof, it is stated:

"This contract shall be considered as effective June 12, 1943, and shall continue until its termination six months after the close of the present war."

It also says the "agreement" was reached "by letter from the borough to the company dated June 10, 1943 and a reply thereto by the company to the borough dated June 11, 1943." That the contract became effective and operative on June 12, 1943 is not only conclusive from paragraph 7 above quoted but likewise from the fact that it was necessary under the terms of the contract "for the borough to make a temporary connection with the company's own supply lines instead of to its pumping station, for a period of thirty days ending July 12, 1943"; pending completion of the main connection between the borough facilities and the water company's reservoir. Therefore, to be valid under the provisions of § 911 of the Public Utility Law for any purpose within the jurisdiction of this Commission, it would have been necessary for the contract to have been filed with us on or before May 13, 1943. It never has been filed with the Commission as a municipal contract and unquestionably the contract is invalid under § 911.

Nor does the majority contend otherwise as I read their opinion. They say in substance, that while the contract was invalid by operation of law under § 911 at the time of its drafting, as a tariff under § 302 its validity has been established and the question is now moot. That conclusion required a lot of deep thinking and much specious reasoning. At best the tariff question is collateral to the basic issue of the validity of the contract dated August 9, 1943, covering rates and service. It is elementary that the contract being invalid in the first instance, it remains invalid in all respects so far as the jurisdiction of this Commission is concerned until cured by meeting the requirements of § 911.

There is no question here concerning the complainant's rights under its contract with the borough of Schuylkill Haven nor does the complainant ask us to construe that contract as contended by the majority. As I understand it the complainant cites its contract dated August 19, 1927, with the borough of Schuylkill Haven in order to show that it has an interest in the subject matter and that its action is not frivolous. Public Utility Commission v. Lipko (1940) 20 Pa PUC 787, 32 PUR(NS) 268. It is too well known in the public utility field now to be questioned that there is nothing inherently wrong with two or more public utilities serving in the same territory provided that they do so in compliance with the law. Here

one utility has complied with the law, another has not. It is not only within the province but I believe it to be the duty of a public utility to call the attention of the Commission by complaint to the unlawful activities of another public utility such that the Commission may act to compel the latter to cease and desist its illegal operations. Since the complainant seeks no remedy before us for the infringement of its contract rights in Schuylkill Haven borough, the cases cited on this point in the majority opinion are wholly inapplicable.

That the complainant may have a right of action in courts of law for damages resulting from an illegal action of respondent also is not before us. But the law is definite and clear that before such remedy can be pursued in courts of law for any such damages, the jurisdiction of this Commission must be exhausted before that of the courts will take effect. See cases cited above.

For the reasons stated, I am of the opinion that the contract between the Silver Creek Water Company and the borough of Schuylkill Haven is invalid as not having been filed with the Commission at least thirty days prior to the effective date of the contract and that a "cease and desist" order should issue forthwith against the Silver Creek Water Company.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Plymouth County Electric Company et al.

D. P. U. 7131
July 6, 1944

PETITION *by electric companies for authority to distribute electricity in certain towns; granted in modified form.*

Monopoly and competition, § 54 — Blanket authority for extensions — Electric company.

Blanket authority for electric companies to distribute and sell electricity in towns partly occupied by them, when requested so to do by the one in whose territory electric service is required and facilities of the one making such request are not presently available, should not be granted; although authority may be granted to a company which has extended a line along certain streets to serve any person who might require electricity in the future from such lines, provided that no extension to these lines or any other such extensions within the towns shall be made without first complying with General Laws, Chap 164, § 30.

By the DEPARTMENT: This is a petition of the Plymouth County Electric Company and the New Bedford Gas and Edison Light Company for authority in accordance with the General Laws, Chap 164, § 30 (Ter. Ed.) to distribute and sell electricity in the territory contiguous to each if and when the services of either is more readily available.

The Plymouth County Electric Company has extended its lines along North Main street, also known as Long Plain road, in the town of Acushnet to serve with electricity one person in the town of Acushnet, one person in the town of Freetown and three persons in the town of Rochester, and also along Perry Hill, also known as Perry Hill road, to serve one person in the town of Acushnet.

Of the six customers to be served, three are customers lying within the territory of the Plymouth County Electric Company and the latter's pole line is located within the territory of the New Bedford Gas and Edison Light Company. The other three customers lie wholly within the territory of the New Bedford Gas and Edison Light Company.

The petitioners pray that New Bedford Gas and Edison Light Company and Plymouth County Electric Company be authorized to distribute and sell electricity in the towns of Acushnet, Freetown, Mattapoisett and Rochester, when requested so to do by the one in whose territory electric service is required and facilities of the one making such request are not presently available.

We are of the opinion that the blanket authority requested to serve these towns in their entirety should not be granted; but we are willing to grant the Plymouth Company the right to serve any person who might require electricity in the future from the lines as now located along North Main street and Perry street in the town of Acushnet, provided that no extension to these lines or any other such extensions within the towns mentioned in the petition shall be made without first complying with the requirements of Chap 164, § 30.

After notice and a public hearing at which there was no opposition, we are of the opinion based upon the evidence submitted that the furnishing of electricity by the Plymouth County Electric Company as set forth in the petition would serve the public convenience.

Accordingly, it is

Ordered that the Plymouth County Electric Company be and hereby is authorized to carry on the business for which it was incorporated along North Main street and Perry street in the town of Acushnet from the lines as now located and that no extension to these lines or any other such extensions within the towns mentioned in the petition shall be made without first complying with the requirements of Chap 164, § 30.

NEW YORK PUBLIC SERVICE COMMISSION

Re Republic Light, Heat & Power Company

Case 10,055
July 25, 1944

INVESTIGATION *of journal entries relating to cost of construction of gas compressor station; journal entries disapproved and entries prescribed in accordance with findings.*

Accounting, § 12.1 — Continuing property record cost — Capitalization.

1. Capitalization of continuing property record costs is contrary to the requirements of the uniform system of accounts and should be disapproved, and an amount so capitalized should be charged to Earned Surplus, p. 51.

Accounting, § 37 — Administrative overheads — Relation to construction — Proof.

2. General and administrative expenses should not be capitalized as a part of construction cost without clear proof that the overheads capitalized relate to construction, p. 51.

Apportionment, § 3 — Administrative overheads — Construction and operation.

3. A determination of general administrative overheads to be capitalized as part of construction cost is erroneous when salaries and expenses of general officers are allocated to plant account on the basis of the ratio between construction and operation expenditures supervised, p. 51.

APPEARANCES: Gay H. Brown, Counsel (by Laurence Olmsted, Assistant Counsel), for the Public Service Commission; John Howell, Attorney, and Frank G. Raichle, Attorney, Buffalo, for the Republic Light, Heat & Power Co., Inc.; Ashley T. Cole, General Counsel, New York, for the Carbide & Carbon Chemicals Corporation.

BURRITT, Commissioner: On November 29, 1939, this Commission authorized the issuance by Republic Light, Heat & Power Company of a note for $50,000 to the Carbide and Carbon Chemicals Corporation, as evidence of cash advances by that company for the construction of the so-called Ensminger gas compressor station located in the town of Tonawanda to enable the utility to render gas service, primarily to that corporation. The order, accepted by the company, provided (paragraphs 3 and 4):

3. That the authority herein granted is upon the express condition that if upon examination of the expenditures made from the funds withdrawn, the Commission shall determine that any expenditure is not a reasonable and proper capital charge or is in

violation of any order of the Commission or any provision or law, a sum equal to such expenditure shall, upon order of the Commission promptly be placed in the fund and such sum shall be subject to all the conditions and restrictions herein provided.

4. That upon completion of the project herein to be constructed the petitioner shall file with this Commission a verified report which shall show a complete detail of unit quantities and costs entering thereinto.

[1–3] The station was constructed in 1939 and 1940 (S. M. 28) and on March 5, 1941, as required by the order, the company submitted a report showing a completed cost of $71,971.22. An examination of these expenditures was made by the Commission's staff. A few adjustments of a minor nature are recommended but these will not in any case reduce the cost below $50,000. However, it was found that the company had charged to this project a portion of its administrative and general expenses, following the method currently used by it in connection with the construction expenditures. This method bases the allocation of general administrative expenses, including salaries and expenses of general officers, between construction and operation upon the ratio of each to the total amount of expenditures supervised. The company has included in the original cost of plant accounts the theoretical amounts computed and allocated by this method.

The principal important issue in this proceeding is, therefore, the propriety of the method used to determine and allocate to the plant accounts certain administrative overhead expenses alleged by the company to be a portion of the construction cost of the Ensminger gas compressor station. The amount of the overheads in question, which are claimed to be related to this compressor station, is $3,118.86.

By agreement of counsel the applicable evidence in this case was introduced in the continuing property record case (C. 9457) where the general principle involved, as applied in certain years and sought to be applied retroactively for all years, is at issue.[1] The decision in these two proceedings will therefore be determinative of the propriety of the general practice of the company in respect to administrative overheads. Four hearings were held during the early part of 1943 and 371 pages of testimony and fourteen exhibits were received, together with certain reports by reference to the files of the Commission.

The issue in this proceeding was thoroughly tried, both the company and the Commission's staff producing expert accounting witnesses in support of their respective contentions. Counsel for the Commission contended (S. M. 41–42) that the administrative overhead charges made by the company are improper both because the method used to determine and allocate such cost is inaccurate and leads to erroneous results, and because they are contrary to the express provisions of the uniform system of accounts. He presented as expert witnesses, Mr. Malcolm F. Orton and Mr. Charles W. Smith. Counsel for the company did not deny that the company's method was in violation of the system of

[1] See report in Case 9457 as to the accounts and records of the Republic Light, Heat and Power Company submitted under date of July 14, 1944.

accounts, but contended through his witnesses, Mr. Harold L. Eastman and Mr. George F. Winters, that it is a proper method in common use, and that it produces a reasonable and equitable result.

The total cost of constructing the Ensminger gas compressor station, and the various overheads included, are set forth in Table 1, which follows:

titled 908, Plant Record Department Expense—clearing,—to which was charged payrolls of continuing property record employees, as well as that department's miscellaneous expenses, supplies, rentals of machines, transportation, forms, etc. This account was later cleared to the various construction and retirement job orders on the basis of the ratio of line entries on the construction project to the

TABLE 1

Summary, by Accounts, of The Ensminger Compressor Station Showing Allocation, by Company, of Certain Overheads

	Total	Engineering and Supervision	Continuing Property Record	General Administration
106—Unclassified Gas Plant	$1,231.89	.....	.....	.....
351—Land and Land Rights	2,497.65	.....	$39.32	$135.36
352—Structures and Improvements	11,306.31	$251.83	364.05	528.36
354—Pumping and Regulating Equipment	56,909.29	956.24	1,869.52	2,453.92
375—Shop Equipment	26.08	2.38	.59	1.22
Total	$71,971,22(a)	$1,210.45	$2,273.48	$3,118.86

(a) Includes $830.36 for interest during construction.

Engineering and superintendence (from Clearing Acct. 909), plant record department expenses (from Clearing Acct. 908), interest during construction, and general administrative costs for the Ensminger compressor station, were also shown by the Commission's witness, Engineer DeWitt, by job orders in Exhibit 5, and all costs, including overheads, by job orders by months by the Commission's witness Rausch, in Commission's Exhibit 6.

The company has capitalized $2,273.48 for continuing property record costs. According to witness DeWitt, who examined the company's accounts all such charges were accumulated in the clearing account entotal entries for the monthly or yearly periods (S. M. 32–33). (See also letters on this matter to and from Commission, Exhibits 11–12.)

There is no such account in the Uniform System of Accounts, but the charging of continuing property record costs is provided for in Account 797, Regulatory Commission Expenses, which is an expense account. Note D provides:

"The cost of maintaining continuing property records of gas plant shall not be included herein but in other operation and maintenance expense accounts appropriate for the class of expenditures."

Obviously this capitalization of continuing property record costs is clearly in violation of the system of accounts. The Commission has never

authorized or permitted the capitalization of such costs which are proper operating expenses and should be so charged. The erroneous charge should be transferred from capital accounts to Earned Surplus.

Mr. DeWitt did not question (S. M. 40) the amount of $1,210.45 which represents direct charges for engineering and superintendence, although it includes (S. M. 37–38) $42.08 of general administrative expenses assigned directly to Engineering and Superintendence; nor did he question the amount of $830.36 for interest during construction (S. M. 40). These appear to be proper charges.

There remains to be considered herein the company's method of apportioning administrative expenses.

General Administrative Costs

The amount of administrative expense charged to this project by the company was $3,118.36, which equates to about 4.33 per cent of the total cost of the station. The administrative charge was calculated by the company on Mr. Diels' theoretical formula that it "costs as much to administer and supervise a dollar of construction as it does to regulate and manage a dollar of operation." The charges are not based on time records currently maintained or upon a representative time study. The term administrative expense as used by the company includes (S. M. 34–35) salaries of general officers, other general office salaries, expenses of general officers and general office employees, general office supplies and expenses, special services, legal services, employees' welfare expenses and pensions, and general rents. Deductions were made of the overhead expenses mentioned above, of purchases of gas, of new business expense and of certain interest during construction charges. The administrative expense items included in this group were then related to the total of gross additions, the removal costs of reclaimed plant, the operation and maintenance costs and expenses of conducting merchandising activity in order to obtain a ratio which was applied to gross additions, resulting in a charge of $3,118.86.

The witness DeWitt showed (S. M. 35) that the monthly ratio thus developed by the company varied during the period of construction of the compressor station, from a low of 4.14 per cent in January, 1940, to a high of 6.72 per cent in December, 1940. This is a wide variation. If the lower ratio had been applied to the total cost, administrative expense would have been $2,979.60, whereas application of the higher ratio would have produced $4,836.45, or a charge greater by 62.3 per cent.

Subsequently Commission counsel offered as a witness Mr. Frank J. Rausch, an accountant on the Commission's staff, who presented testimony and an exhibit prepared from the company's books and work sheets, to show the company's calculations of overheads applied to construction and retirement work for each of the five years 1938–1942, inclusive. This Exhibit 4 shows: (1) the total operating expenses used in the calculations; (2) the items deducted from operating expenses; (3) construction ex-

penditures or gross additions; (4) combined expenditures; (5) overhead expenses by accounts; and (6) annual ratios of overhead expenses to combined expenditures. The annual ratios of overhead expenses to combined expenses varied in the different years from a low of 5.3 per cent in 1940 to a high of 7.21 per cent in 1942. This variation is principally attributable to a decrease in construction expenditures from $303,166.84 in 1940 to $133,749.35 in 1942, a drop of more than 50 per cent (55.8 per cent). The ratio of construction expenditures to combined expenditures in 1940 was 10.4 per cent, while in 1942 it was 11.2 per cent, operating expenses also having declined. These facts indicate that under this method, changes in either construction expenditures or in operating expenses may materially affect the ratios of administrative charges from month to month, or year to year.

An examination of the company's practices, as shown in Exhibit 4, shows numerous inconsistencies; for example, in 1938 and 1939, operating taxes (Account 507) although incurred were not included in the calculations of total operating expenditures but in each of the succeeding three years they were included in amounts approximating $200,000 per year. Miscellaneous amortization (Acct. 537) was used in the computations only in one year, 1940. Federal income taxes were not used in 1938, 1939, and 1940, but were used in 1941 and 1942. They were $85,267.13 in the latter year. In the calculations, only large purchases of natural gas were excluded. The inclusion of smaller purchases of gas was justified by Mr. Diels (S. M. 154) on the ground that they required proportionately more administrative time. Other similar examples could be cited in the calculations of operating expenditures, regulatory Commission expenses (Acct. 797), insurance (Acct. 798), injuries and damages (Acct. 799), miscellaneous general expenses (Acct. 801), maintenance of general property (Acct. 802), and others. Although such expenditures were made, certain of them were not included in the calculations in any year. By these omissions and modifications the application of the formula was made subject to the judgment of the person applying it.

Mr. M. H. Diels, presented as a witness by the company, is an accountant now in the employ of Petroleum Advisers, Inc., consulting engineers for Cities Service companies. He is a graduate of the University of Kansas and has had several years of accounting experience, mostly with Cities Service companies (S. M. 134–141), including the Republic Company in 1941 and 1942. He described in detail (S. M. 142–153) the administrative organization of Republic and how it functions particularly with reference to the construction of the Ensminger gas compressor station, and submitted Exhibits 7(a) to 7(i) inclusive, these being all the job order requisitions issued for the construction of that station.

From his knowledge of Republic's administrative organization and his study of the job order requisitions (Exhs. 7(a) to 7(i)) Mr. Diels was of the opinion (S. M. 153) that the

method used by the company to capitalize overheads is a sound method and that it "costs as much to administer and supervise a dollar of construction as it does to regulate and manage a dollar of operation." He maintained that the method used by Republic is the only practical one and asserted (S. M. 168) that "a time study method for the determination of administrative overheads is impracticable, cumbersome, and incapable of precise application." He stated (S. M. 168–9) that in the case of Republic the general manager's time, for example, would have to be divided between the manufactured and natural gas divisions, between six operating districts, and then between operation and construction, or eighteen different ways, and concluded (S. M. 169) that any employee in the Buffalo office, where general administrative and organization is centered "cannot split his time on a card method so as to fairly show the time spent on the construction and operation, and especially if it must be split eighteen times."

Mr. Diels also cited (S. M. 170) the difficulty of measuring "the time when an executive of a company thinks about a certain topic or what relative weight should be given to his compensation for knowing how, on the one hand, or for doing on the other." Mr. Diels referred to gas plant, instruction 6, which provides that "all overhead construction costs . . . shall be charged to particular jobs or units, on the basis of the amounts of such overheads reasonably applicable thereto" as mandatory, allowing the company no choice except to charge such overheads to construction costs. He also cited Note B under Operation and Maintenance (Account 797), which directs that costs incident to construction or acquisition of gas properties shall not be charged to that expense account but to gas plant account, and Item C, of gas plant instruction 3, wherein it is stated that the term "cost" shall mean "the original cost and shall include not only . . . but also the cost of preliminary studies, plans, surveys, engineering, supervision, and general expenses, which contribute directly and immediately to gas plant without duplication of such costs."

Mr. Diels overlooked paragraph B, gas plant instruction 6, which provides as follows:

"B. The instructions contained herein shall not be interpreted as permitting the addition to gas plant accounts of *arbitrary percentages* or amounts to cover *assumed* overhead costs but as requiring the assignment to particular jobs and accounts of reasonable overhead costs to the extent *actually incurred,* as shown by records currently maintained." (Italics supplied.)

The charging of costs of the nature here in question is specifically provided for in General Instruction 11, paragraphs A, B, and C, of the System of Accounts effective January 1, 1938. These paragraphs are as follows:

11. Distribution of Pay and Expenses of Employees

A. The charges to gas plant, operating expense, and other accounts for services and expenses of employees engaged in activities chargeable to va-

rious accounts, such as construction and operations, shall be *based upon the actual time engaged in the respective classes of work or,* in case that method is impracticable, *upon the basis of a study of the time actually engaged during a representative period.*

B. The pay and expenses of general officers shall be charged to the actual work on which they are engaged, to the particular operations over which they have direct supervision, or to the appropriate accounts provided in the Administrative and General group in operating expenses.

C. Salaries of officers or employees and incidental expenses which can be distributed equitably upon a predetermined basis may be distributed through clearing accounts." (Italics supplied).

Propriety of the Company's Accounting for Overheads

The company presented two expert witnesses, one an engineer and the other an accountant, who testified in support of their opinions as to the propriety and soundness of the company's accounting for administrative overheads.

Mr. Harold L. Eastman is a consulting engineer and the director of the consulting engineering staff of Petroleum Advisers, Inc., a so-called mutual service company serving Cities Service operating companies. He is a graduate of the University of Colorado and has been employed continuously by Henry L. Doherty and Cities Service since 1919. Since 1925 he has devoted the major part of his time to problems of natural gas companies. He is familiar with Republic Company operations over a period of the past fifteen years.

Mr. Eastman repeated the dictum of Mr. Diels,—also an employee of Petroleum Advisers, Inc.—that it "costs as much to administer and supervise a dollar of construction as it does to manage and regulate a dollar of operation," but he presented no specific proof of this statement as a fact obviously considering it axiomatic. Later he admitted (S.M. 334½) that he had never made any study or check as to the truth of the assertion. He stated (S.M. 185) that a public utility differs from an industrial corporation in that its construction additions, although variable, are a constantly recurring annual cost, while an industrial corporation adds to its plant only at infrequent intervals. According to Mr. Eastman (S.M. 185–6) it is the practice of the industrial corporation to write off its assets over a relatively short period of time, while the public utility corporation has a slow turnover and writes off its assets with much less rapidity. Based on these assumed facts he claimed that the management of the industrial corporation does not manage a construction dollar to nearly the same extent as does the management of the utility corporation. The witness asserted (S.M. 187) that the method of keeping a time card is not only impracticable but impossible. Asked if overheads incurred for both construction and operation were incapable of separation, he stated (S.M. 189):

"In my opinion they are. Of course in making that statement I am fully aware of the fact that certain of the expenditures could be segregated by

a time study, but to segregate and allocate the entire expenditure by means of a time study, is utterly impossible."

He gave it as his opinion that failure to capitalize administrative and general overheads would distort the income account and that the company's method of distributing these overheads does not distort the income account.

On cross-examination by counsel for the Commission as to the basis for his conclusion that it costs as much to administer and supervise a dollar of construction as it does to manage and regulate a dollar of operation, the witness Eastman was vague and general in his answers (S.M. 318–319; 326–7; 333–333½). He admitted (S.M. 322) that certain standard equipment purchased from catalogues did not require the same amount of time of general officers as other items. He thought (S.M. 331–2) that general overheads should be added to the work done under contract the same as to work done with company construction forces, but stated that judgment and discretion are necessary in allocating such costs. Nevertheless, he advocated the use of an arbitrary formula under which exactly the same percentage of general overheads is applied to items purchased from catalogues and work done under contract as to construction work by company forces and under complete supervision.

Mr. George F. Winters is a certified public accountant in the states of Oklahoma and California, and a partner in the firm of Barrow, Wade, Guthrie Company, New York. He has practiced public accounting since 1916 except for five years, when he was comptroller of the Phillips Petroleum Company. He teaches accounting at the University of Tulsa. After two weeks Mr. Winters considered that he was familiar with the subject matter of this case although he has not previously done any work on Republic accounts.

The witness testified (S.M. 197) that Republic did not use the annual percentage overheads shown in Exhibit 4 but did use calculated monthly ratios of overheads to operating and construction costs. These varied from 4.4 per cent in February, 1940 to 6.72 per cent in December, 1940, a variation of nearly 60 per cent. He stated (S.M. 200) that if the 5.3 per cent annual rate shown in Exhibit 4 for 1940 had been used, the allocation of overheads to construction costs would have been $3,436.49, whereas by the use of monthly percentage rates there was actually charged to construction costs for the Ensminger station for overhead expense in 1940 an amount of $2,954.50.

Mr. Winters claims that certain overhead costs were charged direct to operating expense and only those for administration and supervision were charged to construction costs. He gave it as his opinion (S.M. 201–2) that the Republic Company had been conservative in its charges of administrative overheads to construction costs of the Ensminger station and that its charges were "fair and reasonable." He considered the method used by Republic Company of charging indirect construction costs to plant account as "correct in principle, for the reason that all construction

work requires management and other supervision and if properly applied, in my opinion, there is no more accurate method for a public utility company than that which applies a percentage of direct construction costs within the period during which the expenditures were made in the ratio of direct expenditures for construction to the combined expenditures for operation and construction." (S.M. 202.)

Mr. Winters testified (S.M. 203) that in his opinion the method used by the company meets the requirements of recognized cost accounting principles and that if consistently and properly applied it will produce the most accurate construction cost record of additions to utility plant account. He claimed (S.M. 204) that the method does not apply arbitrary percentages and does not make additions for assumed overhead costs but only distributes overhead costs to the extent actually incurred, as shown by the record currently mentioned.

Mr. Winters admitted (S.M. 215) that the percentage resulting from the application of the method would be raised or lowered by the inclusion or exclusion of dollars in various accounts and that it is the result of the exercise of the judgment of the individual determining the percentage as to what shall be included or excluded. He further conceded (S.M. 221–2) that in the last analysis the application of sound accounting principles depends upon the correct use of the method, which in turn is based upon the proper exercise of judgment by the management of the company.

Upon cross-examination Mr. Winters was confronted (S.M. 335–357) by counsel for the Commission with quotations from acknowledged accounting authorities which held that general administrative costs should normally not be charged to property accounts and that at the most only those administrative costs incurred in excess of normal overhead costs should be capitalized. He differed from these authorities and maintained that administrative overheads should be charged to plant accounts in order to show correct costs of property and to avoid distortion. He agreed (S.M. 343), however, that operations should not be free of regular overheads just because betterments are in progress and that administrative overheads should not normally be included in inventory values (S.M. 347). The method used by Republic apparently produces both of these erroneous results.

Commission counsel presented Mr. Charles W. Smith and Mr. Malcolm F. Orton as expert accounting witnesses. They testified as to sound accounting principles and the impropriety of including overheads determined on a percentage basis in the property accounts.

Mr. Charles W. Smith is chief of the Bureau of Accounts, Finances and Rates, of the Federal Power Commission. He is a certified public accountant of North Carolina and Maryland and has had upwards of twenty years of experience in accounting. For nine years he was auditor of the tax unit of the United States Treasury Department and for seven years Chief Auditor of the Public Service Commission of Maryland. Since 1936 he has been employed in substantially his present

capacity. He has taught accounting, written extensively on the subject, supervised regulatory accounting, and testified before state and Federal bodies.

Mr. Smith testified (S.M. 72–73) that in his opinion overheads should be capitalized only when there has been a determination that they apply to construction and when a definite relationship has been established between the overheads and the construction. He stated (S.M. 73): "Before any item can be charged to construction it is necessary to show that it relates to construction. It would be erroneous accounting to charge to construction a part of the salary of a general superintendent if it were not established that the general superintendent actually performed duties relating to construction work which benefited construction, together with a reasonable determination as to the nature of and the time devoted to such duties." He further testified (S.M. 76) that it is not correct or satisfactory practice to allocate or prorate arbitrarily by a fixed formula amounts of general and administrative expenditures to construction; and that an imputation that general and administrative overheads relate to construction, is not enough. Sound accounting principles require that there should be proof of the fact.

Mr. Smith said (S.M. 76–79) that a generally recognized method of determining reasonable amounts of general and administrative overheads to be charged is to make time studies for representative test periods. Such studies must be factual and not implied. Capitalization of such overheads requires proof of the reasonableness of the amounts capitalized. The use of a ratio, besides involving judgment as to amounts to be included or excluded in determining it, implies or imputes a relationship between the general and administrative group of expenditures, a consideration which may not in fact exist at all. It is too arbitrary to be called sound accounting practice and often results in wide variations. Such variations distort the income statement which is considered by accountants as the most important accounting statement.

Furthermore, Mr. Smith pointed out (S.M. 79) that general and administrative expenses relate not only to operating and constructive expenditures but to all plant,—old as well as new; to current assets; to securities outstanding; to liabilities; and to revenues. They are the general management expenditures that relate to the business as a whole, and primarily to operating it. In this opinion it is therefore not correct to allocate or prorate such expenditures or substantial parts thereof solely in the ratio of new construction to operating costs. He testified further that an examination of 382 companies reporting to the Federal Power Commission shows that approximately 60 per cent did not capitalize any part of general or administrative expenditures.

Mr. Malcolm F. Orton, Director of the Bureau of Research and Valuation for this Commission, has supervision of the valuation work and determinations of the original cost, and is chiefly responsible for the revision of the uniform systems of accounts prescribed by the New York Public Service Commission. He has been en-

gaged in accounting, auditing, and examining public utility accounts continuously for nearly twenty-five years. His duties include the consideration of questions of the allocation of joint costs in connection with utilities and he has given special consideration to the study of this subject and has testified before various Commissions in numerous cases.

Mr. Orton testified (S.M. 88) that there is sound support for charging no part of the salary and expenses of general executives and their assistants to the cost of construction even though it may be clear that part of their time has been spent in connection with such construction. Many utility as well as industrial companies have followed the practice of charging such costs to operating expenses and no question has ever been raised, to his knowledge, either by regulatory authorities or by public accountants who have certified their income statements and balance sheets, as to the correctness of this practice. He further stated that many well recognized accounting authorities maintain that only the additional overhead costs that are incurred on account of construction, beyond those which would have been incurred had no construction been undertaken during the year in question, should be capitalized.

In Mr. Orton's opinion it is proper to capitalize salaries and expenses of general officers and their assistants and other types of general administrative expenses only when a record is kept showing the time spent, the expenses incurred on account of construction, and when it appears that by failing to capitalize such accounts, operating expenses would be distorted upwards. Even when time records show that time was actually expended on construction, such allocation may be objectionable if it appears that such a charge to construction would relieve income of an appreciable amount which it would otherwise have borne.

When allocations are made between current operations—operating expenses and future operations, i.e., construction, by means of charges to depreciation—conservative accounting requires that the charges be made currently to operating expenses. Mr. Orton believes (S.M. 92) that Republic's proposal to charge to plant accounts and thereby to carry forward charges against future operations through depreciation and return on an arbitrary allocation method, is unsound and should not be permitted.

Company Experience and Practice

Exhibits 13 and 14 show a comparison of annual operating and construction expenditures with general overheads for the 19-year period from 1919 to 1937. From 1919 to 1927 the company did not capitalize any indirect overheads. From 1928 to 1933 it did capitalize certain general overheads. Again from 1934 to 1937 the company discontinued the practice of capitalizing indirect overheads. It only resumed this practice in 1938, as of which date its continuing property record was set up. In the entire 19-year period the company actually capitalized only $76,809 of indirect overheads. In its continuing property record (C. 9457) it proposes to add

$245,002 to its plant accounts for such overheads (Ex. 13).

Exhibit 14, introduced through Mr. Orton, shows the per cent change in operation expenditures and in overheads claimed by Mr. Diels to be applicable thereto during the 19-year period from 1919 to 1937. The variations are wide and show few consistent relationships. In 1927 for example operating expenses increased 40 per cent over 1926, while overheads attributed thereto increased only 2.3 per cent. In 1937 operating expenses increased 23.6 per cent over 1936, while overheads attributed thereto decreased 16.6 per cent. In 1928 operating expenses decreased 16.5 per cent from 1927, but overheads attributed thereto increased 44.5 per cent. The figures demonstrate the inaccuracy and the fallacy of the Diels' formula as applied generally and hence as applied to the Ensminger station.

The lack of definite and consistent relationship between overheads and disbursements as shown by these year-by-year figures upon which the company based its percentages thoroughly discredits the company's theory. Contrary to the testimony of company's witnesses, Exhibit 13 indicates a tendency to uniformity and stability of overheads with little regard for construction expenditures in most years. The relationship of overheads to operation alone is much less variable than it is to total disbursements.

Discussion and Conclusion

Mr. Diels' dictum, that it "costs as much to administer and supervise a dollar of construction as it does to regulate and manage a dollar of operation" overlooks the obvious fact that it is not dollars that require administration and supervision or regulation and management, but the work actually done. The expenditure of $10,000 for a single standardized piece of equipment hardly requires as much administration and supervision as the expenditure of the same sum for a project involving chiefly labor. In general the amount of supervision required varies as between normal and urgent or special undertakings, or between wholesale and piecemeal projects, the purchase of material and the supervision of labor, the negotiation of a contract and the direction of the work of company forces. Furthermore, it overlooks the fact that some overheads would be buried in direct charges for specific projects, as in the case of work done for the company by contractors.

Admittedly there are differences of opinion between accountants as to how general and administrative overhead expenditures should be charged. In this proceeding we have qualified witnesses expressing opposite opinions. A conservative view would appear to require that such overheads be charged to operating expenses currently, or at least that only incremental overheads —that is, costs over and above those necessary to carry on operations— should be capitalized. The Interstate Commerce Commission does not permit steam railroads to capitalize any part of the salary of general officers and clerks, unless they are engaged exclusively in connection with construction of new roads or extensions (S.M. 74). The Federal Power Commission and this Commission follow

a somewhat more liberal rule of permitting some part of the general and administrative expenses to be capitalized. Under this rule a minimum requirement should certainly be that there should be clear proof that the overheads capitalized relate to construction.

In the case before us there is the further consideration that, as we have seen, the Uniform System of Accounts prescribed for gas utilities, including the Republic Company and accepted by it, specifically prohibits charging *assumed* overheads and only permits the charging to construction of those overheads as and when *actually incurred,* as shown by direct charges, or by a time study for a representative period. The proposal of the Republic Company to capitalize $3,118.86 for general administrative overheads in connection with the Ensminger compressor station is not only not in accord with the generally accepted principles of sound accounting but is clearly in violation of the requirements of the Commission's applicable system of accounts.

In too many instances the Republic Company has placed its own interpretations upon provisions of the system of accounts to serve its own purposes. It accepted the order establishing the system of accounts and is expected to be governed by it and to obey its provisions. If it believes that any provision of the system is illegal or unreasonable, it has the right of petition and appeal. It is wholly improper to ignore obvious requirements of the system and to seek to nullify its provisions and to inflate its plant accounts by placing clearly improper interpretations upon them which result in incorrect accounting.

The company has had ample warning in recent years that the Commission does not approve of its method of determining overheads by formula. Some additions, so computed, have been permitted in prior years. No others should be. The Republic Company should be required to reverse the charge to its capital accounts of $3,118.86 for administrative overheads on the Ensminger station, determined by arbitrary percentage allocations and to charge the same to Earned Surplus.

The capitalization of continuing property record costs is contrary to the requirements of the Uniform System of Accounts and should be disapproved. The $2,273.48 so capitalized should be charged to Earned Surplus.

The company's journal entries should be disapproved and journal entries prescribed in accordance with the findings herein. An order is submitted accordingly.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

Samuel Okin

v.

Securities and Exchange Commission

— F(2d) —
July 14, 1944

PETITION *by stockholder of holding company to review orders of Securities and Exchange Commission relating to revocation of privilege of participation, continuation of hearing, and removal of trial examiner; motion by petitioner for stay denied and motion by Commission to dismiss petition granted.*

Appeal and review, § 9 — Interlocutory orders — Refusal to remove trial examiner.

1. An order of the Securities and Exchange Commission refusing to remove a trial examiner is interlocutory and therefore not subject to review, p. 64.

Appeal and review, § 9 — Interlocutory orders — Refusal to grant continuance.

2. An order of the Securities and Exchange Commission denying a motion that a hearing in progress before a trial examiner be continued for a stated time is an interlocutory order and therefore not subject to review, p. 64.

Appeal and review, § 8 — Order denying intervention — Discretion of Commission.

3. An order of the Securities and Exchange Commission refusing to overrule the revocation of a stockholder's limited participation in proceedings before the Securities and Exchange Commission relating to a holding company is not reviewable, since permission to participate is discretionary with the Commission, p. 64.

Appeal and review, § 73 — Stay of orders — Orders not appealable.

4. The court has no power, under § 24(b) of the Holding Company Act, 15 USCA § 79x(b), to stay orders of the Securities and Exchange Commission when such orders are interlocutory and not reviewable, p. 64.

Before Swan, Augustus N. Hand, and Chase, Circuit Judges.

APPEARANCES: Samuel Okin, pro se; Roger S. Foster, Solicitor, Homer Kripke, Assistant Solicitor, Morton E. Yohalem, Counsel, Public Utilities Division, and Alfred Hill, Attorney, for respondent.

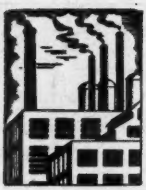
PER CURIAM: This case is before

us upon cross motions, one by the petitioner to stay three orders of the Commission pending petition for review thereof, and one by the respondent to dismiss the petition on the ground that the orders are not reviewable because not final.

[1–4] The orders were made in connection with a proceeding designated by the Commission as File No. 59–12 involving Electric Bond & Share Company and other corporations registered under the Public Utility Holding Company Act of 1935, 15 USCA §§ 79a et seq. In this proceeding the petitioner, who is the owner of 9,000 shares of common stock of Electric Bond & Share Company, was granted the privilege of limited participation pursuant to the Commission's rules. On May 19, 1944 this privilege was revoked by the trial examiner. Mr. Okin appealed forthwith to the Commission and on May 23rd it made the three "orders" in question. They are in the form of letters addressed to Okin in reply to letters written by him to the Commission. They deny a motion that the Commission overrule the trial examiner's revocation of Okin's privilege of limited participation; a motion that the hearing in progress before the trial examiner be continued for one week from May 22nd; and a motion that the trial examiner be removed.

The "orders" challenged by Okin's petition are interlocutory. This is obviously so as to the refusals to remove the trial examiner and to grant a continuance of the hearing. Only final orders of the Commission are subject to review. Securities and Exchange Commission v. Jones (1935) 79 F (2d) 617, 619; cf. Federal Power Commission v. Metropolitan Edison Co. (1938) 304 US 375, 385, 82 L ed 1408, 24 PUR(NS) 394, 58 S Ct 963. Refusal to overrule the revocation of Okin's limited participation is likewise not reviewable. Whether a person shall be permitted to participate in the proceedings "in the public interest or for the protection of investors or consumers" is discretionary with the Commission. 15 USCA § 79s; Rule XVII (g) of the Commission's Rules; cf. Alston Coal Co. v. Federal Power Commission (1943) 51 PUR(NS) 245, 137 F(2d) 740, 742. Refusal of such participation is like an order denying intervention in an action where intervention is not a matter of right. Such an order is not appealable. New York v. Consolidated Gas Co. (1920) 253 US 219, 64 L ed 870, 40 S Ct 511; United States v. California Coöp. Canneries (1929) 279 US 553, 556, 73 L ed 838, 49 S Ct 423. Since the challenged orders are not subject to review, we have no power to stay them under § 24(b), 15 USCA § 79x(b).

Petitioner's motion is denied; respondent's motion is granted.



Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

O. Z. Introduces New Type Expansion Fitting

THE O. Z. Electrical Manufacturing Company, of Brooklyn, N. Y., announces the introduction of a new type expansion fitting of a design never before made. It has several advantages, according to the manufacturer, the principal one being that it is shorter and more compact than previous types. The standard finish is cadmium plated, but it can also be furnished in bronze. This group of O. Z. fittings was designed to compensate for expansion and contraction in a line of conduit. The head is sealed by a special packing to keep out water or moisture, and is ideal for use on bridges, tunnels, dams or any construction where long lines of conduit must be installed.

Complete details of this and other new products, together with the regular O. Z. line, are given in a 140-page catalog, which illustrates and describes, with specifications and price lists, the full O. Z. line including conduit fittings, cable terminators, junction boxes, solderless connectors, power connectors and grounding devices.

Koppers Forms Division For Postwar Service

THE beginning of a department to provide special postwar engineering, combustion and research service to industrial, utility and domestic customers of the Koppers Coal division of Eastern Gas and Fuel Associates is announced by Walter Rothenhoefer, general manager of sales.

Graham Granger, of Koppers Coal, has been assigned to head the new department. He will be charged with the responsibility of seeing that the equipment of customers works efficiently, that the right coal is being used or that the right equipment is being employed for the type of coal that is available.

While the creation of the department is now under way its completion is not expected until postwar manpower conditions make it possible to complete the staff.

New Lighted Wall Switch Plate Introduced

AN electrically lighted wall switch plate that operates for less than two cents per year and adds four-fold to the utility and convenience of ordinary light switches, has been introduced by the Associated Products Company, of Columbus, Ohio.

Known as the LumiNite Wall Switch Plate, it features a tiny shielded light that comes on automatically when room lights are turned out, and remains off whenever room lights are burning. Thus it not only makes the switch easy to locate in the dark but also serves as a safety or pilot light at night, and helps keep walls free of smudges and fingerprints.

Another important advantage claimed for the LumiNite plate is that it saves on light bills by indicating whenever lights that can't be seen from the switch location have been inadvertently left on, either in the daytime or at night.

The plate is gracefully molded in a single

piece of ivory plastic, at the top of which is an attractive housing for the fractional-wattage glow lamp and mechanism. A portion of this housing is specially fabricated so that the bulb will emit a soft, pleasing glow of light—so subdued that its use in the bedroom will not disturb the lightest sleeper, yet providing just enough visibility for safety and convenience in finding one's way about at night.

The unit fits any standard switch, and works equally well in three- and four-way switch arrangements.

Selling at $1 each the plates are being distributed through regular wholesale and retail channels. Further data may be obtained from the Associated Products Company, 74 East Long Street, Columbus 15, Ohio.

A-C Publication

AN expanded line of distribution transformers designed to withstand complete submersion in water are completely described in a new bulletin offered by the Allis-Chalmers Mfg. Co., Milwaukee, Wis.

Built for use in underground vaults and similiar locations, the subway distribution transformers operate under these conditions without damage to themselves or interruption to service. They are available in standard sizes—10 to 200 kva—and standard voltages. Specifications include standard NEMA accessories and construction.

Complete descriptions of the units are contained in new bulletin, B6333, available on request.

G-E Aid for Selection of Instrument Transformers

A 56-PAGE booklet, "Instrument Transformer Accuracy Standards," has been made available by the General Electric Company. It is a two-part booklet. The first part explains the ASA accuracy standards for potential and current transformers and shows how they differ from the NEMA standards.

The second part of the booklet consists primarily of a handy guide for the selection from a complete line of standard indoor and outdoor current and potential transformers.

Complete information on the selection of instrument transformers is available in this well illustrated booklet, GEA-4240, available upon request from the General Electric Company, Schenectady 5, New York.

Sales Manager Named

J. B. WARD, vice president of The Addressograph-Multigraph Corp., has announced the appointment of W. H. Wilson as sales manager of the company's Multigraph division.

The promotion from assistant sales manager comes to Mr. Wilson simultaneously with his completion of 25 years of service with the office equipment manufacturing company.

Self-bonding Floor Material

A SELF-BONDING flooring material that can be laid over old concrete, cement, wood or composition without adhesives or separate bonding agents, has been introduced by Continental Asbestos Refining Corporation.

Known as Stonoleum, this material is claimed to feel like rubber and wear like stone. A unique colloidal composition is said to give it greater resistance, not only to direct impact and load, but also to continuous vibration, abrasion, and other effects of traffic.

Another characteristic maintained is a "self-healing" feature—small holes in a Stonoleum floor disappear under traffic, making Stonoleum particularly useful in plants planning reconversion, or where equipment is shifted periodically.

Further information can be obtained from the manufacturer, 1 Madison Ave., New York.

Harvester Appointment

W. C. SCHUMACHER, manager of sales, motor truck division, International Harvester Company, has announced the appointment of Karl W. Freeman as southern district manager.

Prior to his new appointment, Mr. Freeman

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THE ELECTRIC STORAGE BATTERY CO.
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was the company's branch manager at Atlanta, Georgia.

J. B. Black Elected Director U. S. Steel Corporation

FOLLOWING the regular monthly meeting recently of the board of directors of U. S. Steel Corporation, Irving S. Olds, chairman, announced that James B. Black, of San Francisco, California, has been elected a director of the corporation to fill the vacancy on the board created by the death earlier this year of William J. Filbert. Mr. Black thus becomes the first Pacific Coast director of the steel corporation.

Mr. Black is president of Pacific Gas and Electric Company, San Francisco, and is prominent in Pacific Coast civic, philanthropic and industrial affairs. His election adds to the membership of the board of directors of U. S. Steel Corporation a representative of the rapidly expanding western industrial area served by the steel corporation.

Mr. Black is a director and member of the executive committee of the Southern Pacific Company, and also is a director of the Equitable Life Assurance Society, Fireman's Fund Insurance Company, Del Monte Properties Company and California Pacific Title Insurance Company. He is a member of the Business Advisory Council, U. S. Department of Commerce, president of the San Francisco War Chest and a director or trustee of various other California community organizations.

STATEMENT OF OWNERSHIP

Statement of ownership, management, circulation, etc., of Public Utilities Fortnightly, published biweekly at Baltimore, Md.; required by the Acts of Congress of August 24, 1912, and March 3, 1933.

Publisher: Public Utilities Reports, Inc., Washington, D. C.

Editor: Henry C. Spurr, Washington, D. C.

Managing Editor: Francis X. Welch, Washington, D. C.

Business Manager: A. S. Hills, Washington, D. C.

Owners: (Names and addresses of individual owners, or if a corporation, its name, and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.) Public Utilities Reports, Inc., Washington, D. C.; Orlando B. Willcox, New York, N. Y.; Owen D. Young, New York, N. Y.; L. R. Nash Ridgefield, Conn.; William J. Hagenah, Glencoe, Ill.

Known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: None.

PUBLIC UTILITIES REPORTS, INC.
A. S. Hills, Business Manager

Sworn to and subscribed before me this 23rd day of September, 1944.

Grace C. Ingels,
Notary Public.

(My commission expires June 2, 1946.)

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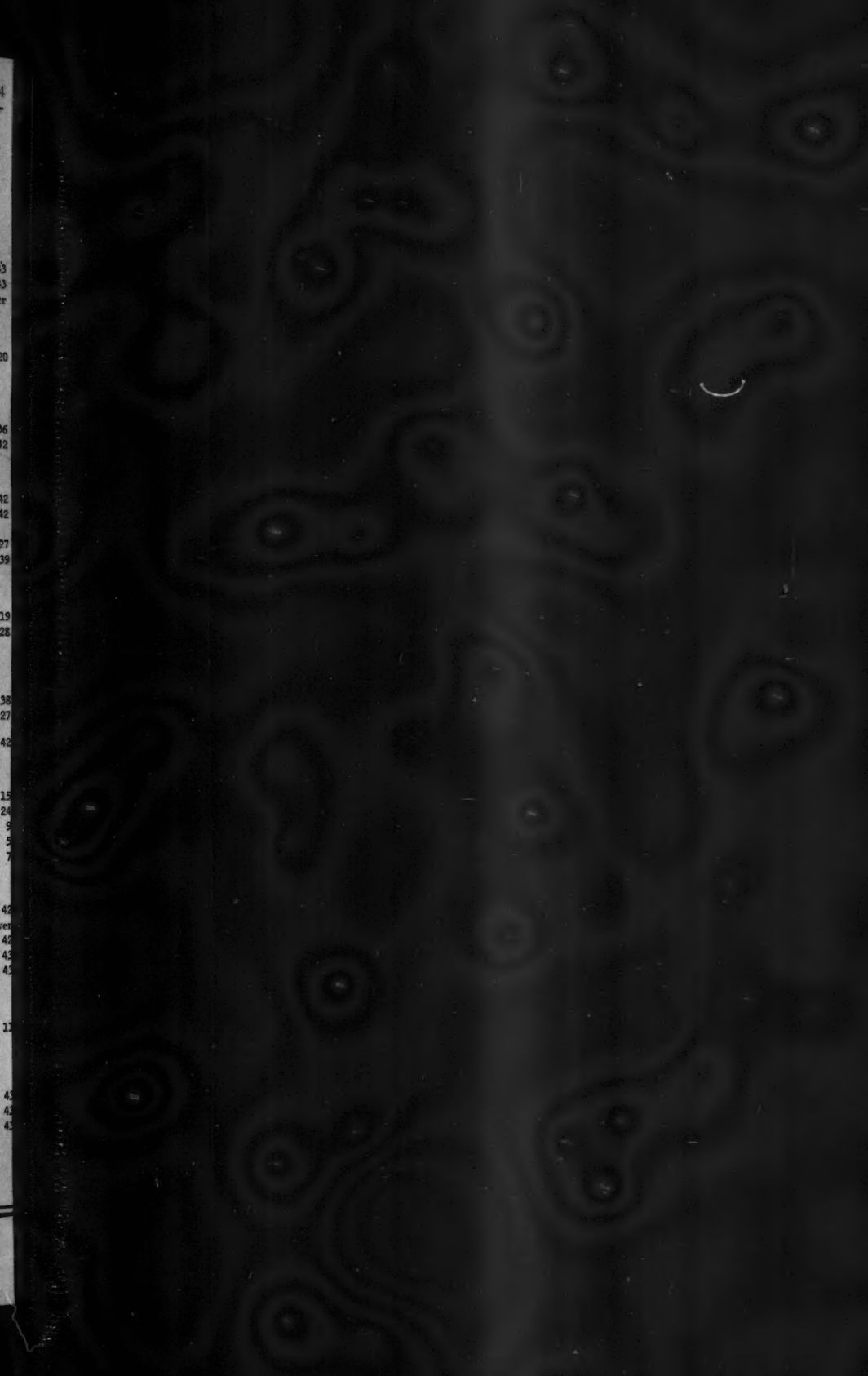

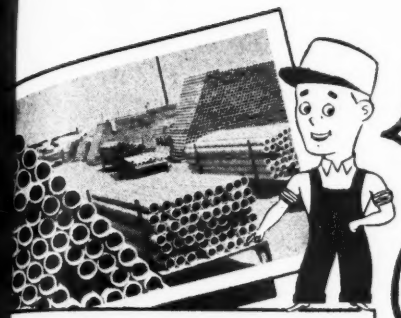

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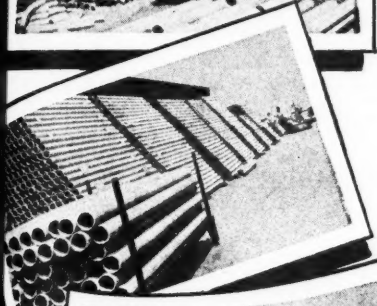

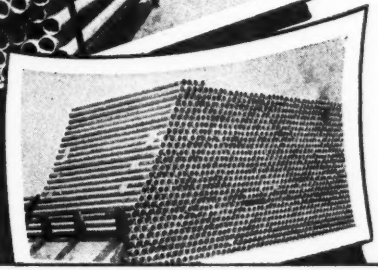

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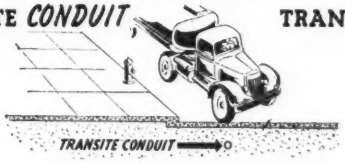
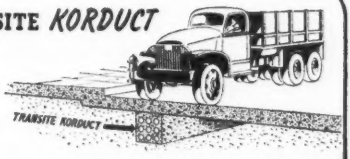


For exposed work and use underground without a concrete encasement.

TRANSITE *KORDUCT*



For installation in concrete. Thinner walled but otherwise identical with Transite Conduit.

Johns-Manville TRANSITE DUCTS

Freedom for Your Planning

yet STANDARD UNITS throughout

From standard, basic units repetitively manufactured, G.E. can build up factory-assembled switchgear, for a station or a system, to carry out your most advanced thinking

Go ahead with your station planning or system planning to meet any conceivable need: new growth; better circuit protection; improved regulation, relaying, or control. Then ask General Electric how far *standard* switchgear equipments can go to bring such a "dream" installation into being at the lowest investment cost.

Electric-service companies who have made this test have been stimulated, rather than limited, by the factory-assembled combinations that await their choice. In addition, substantial savings in design cost, in installation cost, and in delivery time have been realized.

A further increase in the value you receive for each dollar invested in switchgear is bound to come with every increase in our opportunity to employ repetitive manufacture. May we count on your co-operation as our standardization policy is extended to new fields? *General Electric Company, Schenectady 5, N. Y.*

The following types of G-E switchgear are built by repetitive manufacture:

Metal-enclosed duplex switchboards

FH cubicles with oil or air breakers

Metal-enclosed reactor units

Metal-enclosed cable-entrance units

Metal-enclosed bus-run units

Metal-clad switchgear

Low-voltage, metal-enclosed, drawout air-circuit-breaker equipment

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